TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 485.

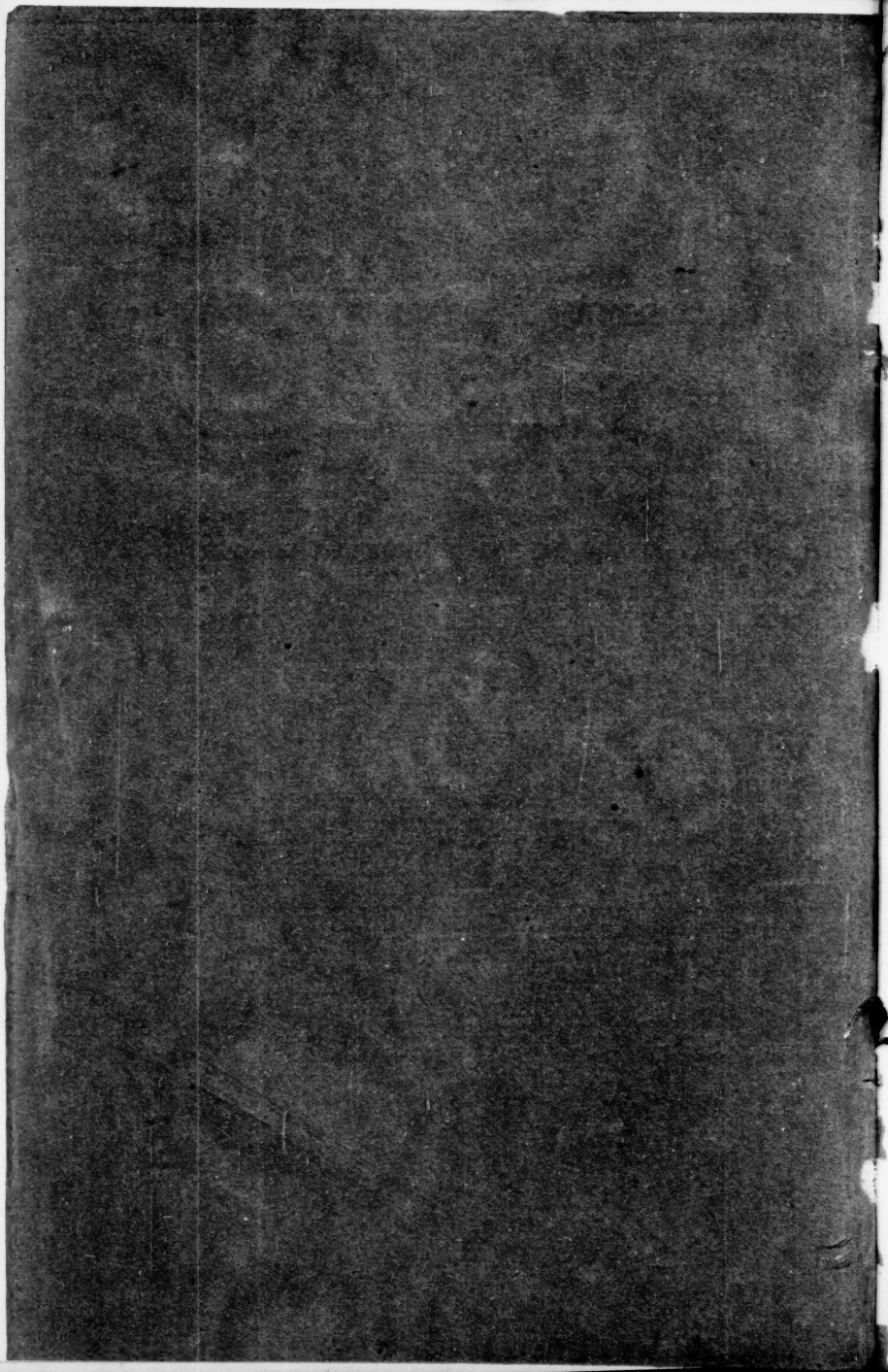
HORATIO J. OLCOTT, PLAINTIFF IN ERROR,

vs.

THE COUNTY BOARD OF SUPERVISORS OF FOND DU LAC COUNTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED JANUARY 16, 1871.



SUPREME COURT OF THE UNITED STATES.

No. 485.

HORATIO J. OLCOTT, PLAINTIFF IN ERROR,

vs.

THE COUNTY BOARD OF SUPERVISORS OF FOND DU LAC COUNTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Præcipe for summons	1	1
Summons	3	1
Return to summons	4	2
Declaration	5	2
Plea and affidavit of defense	34	37
Trial and verdict	35	38
Judgment against plaintiff for costs	36	38
Bill of exceptions	36	39
Bond for costs on writ of error	43	43
Approval of same	45	44
Clerk's certificate	46	44
Writ of error	47	44
Citation and return	48	45

1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district, on the first Monday (being the third day) of October, A. D. 1870—

Present, the Honorable Andrew G. Miller, district judge, presiding; Charles S. Hamilton, marshal; and Edward Kurtz, clerk.

Among other, the following proceedings were had, to wit:

HORATIO J. OLCOTT, PLAINTIFF,
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County, defendant. } At law.

Be it remembered that, heretofore, to wit, on the 22nd day of February, A. D. 1870, came the above-named plaintiff, by his attorneys, Messrs. J. A. Bentley and Finches, Lynde & Miller, and filed his præcipe for a summons against the above-named defendant, as follows, to wit:

Præcipe for summons.

Circuit court of the United States in and for the district of Wisconsin.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County.

Please issue a summons in the above-entitled cause in a plea of trespass on the case on promises to the damage of the plaintiff, sixty thousand dollars damages, returnable the first Monday of March next.

Yours, &c.

2 J. A. BENTLEY and
FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

Dated February 22d, 1870.

And same day filed bond for costs according to the rules and practice of the court, which is approved.

Whereupon a summons issued, as follows:

3 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon The County Board of Supervisors, of Fond du Lac County, to appear before the circuit court of the United States of America for the district of Wisconsin, in the seventh circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of March ensuing, then and there to answer unto Horatio J. Olcott in a plea of trespass on the case on promises to his dam-

age, sixty thousand dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twenty-second day of February, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

EDWARD KURTZ, *Clerk.*

J. A. BENTLEY &
FINCHES, LYNDE & MILLER, *Attorneys.*

4 (Indorsed:) 30. Law docket C. Horatio J. Olcott vs. The County Board of Supervisors of Fond du Lac County. Summons. Damages, $60,000. Filed February 25th, 1870.

Return.

Served on the within-named, "The Board of Supervisors of Fond du Lac County," by showing this writ, and delivering personally a copy thereof to each, E. H. Galloway, chairman, and C. H. De Groat, clerk of the board of supervisors of said county, this 24th day of February, 1870.

C. S. HAMILTON,
Marshal.

Fees, $10 40.

5 MARCH 22, 1870.

This day came the plaintiff, by his attorneys, and filed his declaration as follows:

Declaration.

Circuit court of the United States in and for the district of Wisconsin, of the 1st Monday of April, A. D. 1870.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County.

DISTRICT OF WISCONSIN, *ss:*

Horatio J. Olcott, who is a citizen and resident of the State of New York, plaintiff in this suit, by J. A. Bentley and Finches, Lynde & Miller, his atty's, complains of the County Board of Supervisors of Fond du Lac County, defendant in this suit, a corporation created and existing under and by virtue of the laws of the State of Wisconsin, of a plea of trespass on the case on promises.

For that whereas the said defendant heretofore, to wit, on the fifteenth day of February, A. D. 1869, to wit, at the district of Wisconsin aforesaid, in pursuance of act of the legislature of the State of Wisconsin, entitled "An act to authorize the county of Fond du Lac to aid in the completion of the Sheboygan and Fond du Lac Railroad, and to aid the building of a railroad from the city of Fond du Lac to the city of Ripon," and which said act was duly approved April 10th, 1867, and duly published April 26th, 1867, did execute, by its proper officers, and deliver

to the Sheboygan and Fond du Lac Railroad Company fifty-two certain county orders, or promissory notes, numbering from one to fifty-two, each for one hundred dollars, and amounting in the aggregate to fifty-two hundred dollars, and which said fifty-two county orders, or promissory notes, are in the following form, differing only in the number, to wit:

$100. County order. No.

6 The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan and Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per centum per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand, at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: G. H. DE GROAT, *Clerk.*

And said plaintiff avers that, after the said fifty-two orders or promissory notes were signed and delivered as aforesaid to the said railroad company, and before the maturity thereof, they were for a good and valuable consideration by him, said plaintiff, duly paid therefor, duly transferred to him, the said plaintiff, and he, the said plaintiff, thereby, in due course of business, became, and was, the lawful owner and holder of the same, and entitled to demand the payment thereof, and to receive the amount thereof.

And said plaintiff avers that, prior to the commencement of this suit, to wit, on the maturity of the said fifty-two county orders or promissory notes, to wit, at the district of Wisconsin aforesaid, he duly demanded of and from the defendant the payment of the said fifty-two orders, or promissory notes, and each of them; and the said defendant did then and there, to wit, at the time & place last aforesaid, decline and refuse to pay the same, or any or either of them.

And said plaintiff avers that the said defendants, although often requested to pay the said fifty-two orders, or promissory notes, and each of them, has hitherto wholly neglected and refused, and still doth neglect and refuse to pay the same, or any part thereof, to the great damage of the said plaintiff, to wit, at the district aforesaid.

2nd count. And for that whereas heretofore, to wit, on the fifteenth day of February, A. D. 1869, to wit, at the district of Wisconsin aforesaid, the said defendant, a corporation duly created under and by
7 virtue of the laws of the State of Wisconsin, did, in pursuance of an act of the legislature of the State of Wisconsin, entitled "An act to authorize the county of Fond du Lac to aid in the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railroad from the city of Fond du Lac to the city of Ripon," (and which said act was duly approved April 10th, 1867, and duly published April 26th, 1867,) execute, or cause to be executed, by its proper officers, and delivered to the Sheboygan and Fond du Lac Railroad Company twenty-five certain other county orders, or promissory notes, numbering from fifty-three to seventy-seven, each for two hundred dollars, and amounting in the aggregate to the sum of five thousand dollars, and which said twenty-five orders, or promissory notes, are in the following form, differing only in the number, to wit:

$200. County order. No. 53.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan and Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand, at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DE GROAT, *Clerk.*

And said plaintiff avers that, after the said twenty-five county orders or promissory notes were signed and delivered, as aforesaid, to the said railroad company, and before the maturity thereof, they, and each of them, were for a good and valuable consideration, by him, said plaintiff, paid therefor, duly transferred to him, the said plaintiff, and he, the said plaintiff, thereby, in due course of business, became and was the lawful owner and holder thereof, and became and was entitled to demand the payment of the said twenty-five county orders or promissory notes, of and from the said defendant, and to receive the amount thereof.

8 And said plaintiff avers that, prior to the commencement of this suit, to wit, on the maturity of the said twenty five county orders or promissory notes, to wit, at the district of Wisconsin aforesaid, he, the said plaintiff, duly demanded of the said defendant the payment of the said twenty-five county orders or promissory notes, and the said defendant did then and there decline and refuse to pay the same, or any or either of them, or any part thereof.

And said plaintiff avers that, although the said defendant has hitherto been often requested, to wit, at the district aforesaid, to pay the said twenty-five orders or promissory notes, the said defendant hath hitherto wholly neglected and refused to pay the same, or any part thereof, to wit, at the district aforesaid, to the great damage of the said plaintiff.

3d count. And for that whereas heretofore, to wit, on the fifteenth day of February, A. D. 1869, to wit, at the district of Wisconsin aforesaid, the said defendant, a corporation duly created under and by virtue of the laws of the State of Wisconsin, did, in pursuance and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize the county of Fond du Lac to aid in the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railway from the city of Fond du Lac to the city of Ripon," (and which said act was duly approved April 10th, 1867, and duly published April 26, 1867,) execute, by its proper officers, and deliver to the said the Sheboygan and Fond du Lac Railroad Company sixteen (16) certain other county orders, or promissory notes, numbering from 78 (seventy-eight) to 93, (ninety-three,) each for three hundred dollars, and amounting in the aggregate to forty-eight hundred dollars, and which said orders, or promissory notes, are in the following form, differing only in the number, to wit:

$300. County order. No. 78.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan and Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent.

per annum. No interest allowed on this order after maturity unless presented for payment.

Given under my hand, at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DE GROAT, *Clerk.*

And said plaintiff avers that, after the said sixteen (16) county orders or promissory notes were signed and delivered, as aforesaid, to the said railroad company, and before their maturity, they, and each of them, were, for a good and valuable consideration by him, said plaintiff, duly paid therefor, duly transferred and delivered to him, the said plaintiff, and he the said plaintiff thereby in due course of business became and was the lawful owner and holder of the same, and of each of them, and entitled to demand the payment thereof, and to receive the amount thereof.

And said plaintiff avers that, prior to the commencement of this suit, to wit, on the maturity of the said sixteen orders or promissory notes, he, the said plaintiff, to wit, at the district of Wisconsin aforesaid, duly demanded from the said defendant the payment of the same, and the said defendant did then and there refuse to pay the same.

And said plaintiff avers that the said defendant, although often requested to pay the said sixteen orders or promissory notes, and each of them, to wit, at the district aforesaid, hath from hence hitherto wholly neglected and refused, and still doth neglect and refuse, to the great damage of the said plaintiff, to wit, at the district aforesaid.

4th count. And for that whereas heretofore, to wit, on the fifteenth day of February A. D. 1869, to wit, at the district of Wisconsin aforesaid, the said defendant, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, did, in pursuance and by virtue of a law of the State of Wisconsin, duly enacted, entitled "An act to authorize the county of Fond du Lac to aid in the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railroad from the city of Fond du Lac to the city of Ripon,"
10 (and which said act was duly approved April 10th, 1867, and duly published April 26th, 1867,) execute, or cause to be executed, by its proper officers, and deliver to the Sheboygan and Fond du Lac Railroad Company, ten county orders, or promissory notes, numbering from ninety-four (94) to one hundred and three, (103,) inclusive, of five hundred dollars each, and amounting to five thousand dollars in the aggregate, and which said ten county orders, or promissory notes, are in the following form, differing only in the numbers, to wit:

$500. County order. No. 94.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan and Fond du Lac R. R. Co., or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac this 15th day of February, A. D. 1869.

E. H. GALLOWAY.
Chairman Co. Board Supervisors.

Attest: C. H. DE GROAT, *Clerk.*

And said plaintiff avers that, after the said ten county orders, or promissory notes, were signed and delivered as aforesaid to the said railroad company, and before the maturity thereof, they were for a good and valuable consideration by him, said plaintiff, duly paid therefor, duly transferred to him, the said plaintiff, and he, the said plaintiff, thereby in due course of business became and was the lawful owner and holder of the same, entitled to demand of the defendant the payment thereof, and to receive the amount due thereon.

And said plaintiff avers that, prior to the commencement of this suit, to wit, on the maturity of the said ten county orders, or promissory notes, he, the said plaintiff, to wit, at the district of Wisconsin aforesaid, duly demanded of and from the said defendant the payment of the said ten county orders, or promissory notes, and each of them, and the said defendant did then and there decline and refuse to pay the same or any part thereof.

11 And said plaintiff avers that, although the said defendant hath hitherto, to wit, at the district of Wisconsin aforesaid, been often requested to pay the said ten orders and each of them, yet the said defendant, not regarding its said promise and undertaking, hath from hence hitherto wholly neglected and refused to pay the same, or any part thereof, to the said plaintiff, to the great damage of the said plaintiff, to wit, at the district of Wisconsin aforesaid.

5th count. And for that whereas heretofore, to wit, on the fifteenth day of February, A. D. 1869, at the district of Wisconsin aforesaid, the said defendant, a corporation duly created under and by virtue of the laws of the State of Wisconsin, did, in pursuance of an act of the legislature of the State of Wisconsin entitled "An act to authorize the county of Fond du Lac to aid in the completion of the Sheboygan and Fond du Lac Railroad, and to aid the building of a railroad from the city of Fond du Lac to the city of Ripon," (and which said act was approved April 10th, 1867, and duly published April 26th, 1867,) execute, by its proper officers, and deliver to the Sheboygan and Fond du Lac Railroad Company ten (10) other certain county orders or promissory notes, each for one thousand dollars, numbering from one hundred and four (104) to one hundred and thirteen, (113,) inclusive, and amounting in the aggregate to ten thousand dollars; and which said ten county orders or promissory notes are in the following form, differing only in the number, to wit:

$1,000 00 County order. No. 104.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan and Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT, *Clerk.*

12 And said plaintiff avers that, after the said ten orders, or promissory notes, were signed and delivered, as aforesaid, to the said railroad company, and before the maturity thereof, they and each of them were, for a good and valuable consideration, by him, said plaintiff, duly paid therefor, duly transferred and delivered to him, the said plaint-

iff, and he, the said plaintiff, thereby in due course of business became and was the lawful owner and holder of the same, and entitled to demand of and from the defendant the payment thereof, and to receive from the said defendant the amount due thereon.

And said plaintiff avers that, prior to the commencement of this suit, to wit, on the maturity of the said ten orders, or promissory notes, to wit, at the district of Wisconsin aforesaid, he, said plaintiff, duly demanded of and from the said defendant the payment of the said ten orders, or promissory notes, and each of them; and the said defendant did then and there, to wit, at the time and place aforesaid, refuse and decline to pay the same or any part thereof.

And said plaintiff avers that the said defendant, although often requested, to wit, at the district aforesaid, to pay the said ten orders, or promissory notes, hath from hence hitherto wholly neglected and refused. and still doth neglect and refuse, to the great damage of the said plaintiff, to wit, at the district aforesaid.

13 6th count. And for that whereas, the said defendant on the twenty-first day of February, in the year one thousand eight hundred and seventy, at the said district of Wisconsin, was indebted to the said plaintiff in the sum of sixty thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence of the said plaintiff by the said plaintiff before that time done, performed, and bestowed, in and about the business of the said defendant, and for the said defendant, and at the special instance and request of the said defendant, and also for divers materials and other necessary things by the said plaintiff found, provided, used, and applied in and about that work, at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, done, performed, and bestowed divers other work and labor, care and diligence, in and about the business of the said defendant, and for the said defendant and had before that time found, provided, used, and applied divers other materials and other necessary things, in and about that business, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendant for the same, when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said plaintiff therefore reasonably deserve to have of the said defendant for the same the further sum of sixty thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the sum of sixty thousand dollars of like lawful money as aforesaid, for divers, goods, wares, and merchandise, by the said plaintiff before that time sold and delivered to the said defendant, and at the like request of the said defendant; and in the further sum of sixty thousand dollars of lawful money as aforesaid, for so much money

before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant: and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested. And, whereas, also, the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, accounted together with the said plaintiff of and concerning divers others sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there found to be in arrear and indebted to the said plaintiff in the further sum of sixty thousand dollars of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, &c., hath not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of sixty thousand dollars, and therefore the said plaintiff brings suit, &c.

J. A. BENTLEY &
FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

14 To the within defendant:

Take notice that the following are copies of 113 promissory notes, or county orders, which will be offered in evidence on the trial of this cause, under the money counts in the within declaration contained.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys

15 $1,000 *County order.* No. 113.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 1.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 2.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 3.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 4.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 5.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

16 $100. *County order.* No. 6.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 7.

The treasurer of Fond du Lac County, Wisconsin will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 8.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 9.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 10.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 11.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

17 $100. *County order.* No. 12.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 13.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 14.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 15.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 16.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 17.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

18 $100. *County order.* No. 18.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 19.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 20.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 21.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 22.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 23.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

19 $100. *County order.* No. 24.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairmn Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 25.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 26.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 27.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 28.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 21.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 22.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 23.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

19 $100. *County order.* No. 24.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairmn Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 25.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 26.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 27.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 28.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 29.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 30.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 31.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 32.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 33.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 34.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 35.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 36.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 37.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 38.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 39.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 40.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 41.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT.
Clerk.

22 $100. *County order.* No. 42.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 43.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 44.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 45.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 46.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 47.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

23 $100. *County order.* No. 48.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 49.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 50.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 51.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$100. *County order.* No. 52.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 53.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

24 $200. *County order.* No. 54.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 55.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 56.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 57.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 58.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 59.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

25 $200. *County order.* No. 60.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 61.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 62.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 63.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 64.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 65.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

26 $200. *County order.* No. 66.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 67.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 68.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 69.

The treasurer of Fond Du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 70.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 71.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

27 $200. *County order.* No. 72.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 73.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 74.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 75.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 76.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$200. *County order.* No. 77.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer two hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

28 $300. *County order.* No. 78.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 79.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 80.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 81.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 82.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 83.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

29 $300. *County order.* No. 84.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 85.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 86.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 87.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 88.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest. C. H. DEGROAT,
Clerk.

$300. *County order.* No. 89.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

30 $300. *County order.* No. 90.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 91.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate or seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 92.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$300. *County order.* No. 93.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer three hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 94.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 95.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

31 $500. *County order.* No. 96.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 97.

The treasurer of Fond du lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 98.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 99.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 100.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 101.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A, D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

32 $500. *County order.* No. 102.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$500. *County order.* No. 103.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer five hundred dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 104.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1860.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 105.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 106.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 107.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

33 $1,000. *County order.* No. 108.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 109.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 110.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 111.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of February, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

$1,000. *County order.* No. 112.

The treasurer of Fond du Lac County, Wisconsin, will pay the Sheboygan & Fond du Lac R. R. Co. or bearer one thousand dollars, one year after date, with interest at the rate of seven per cent. per annum. No interest allowed on this order after maturity, unless presented for payment.

Given under my hand at Fond du Lac, this 15th day of Februa'y, A. D. 1869.

E. H. GALLOWAY,
Chairman Co. Board Supervisors.

Attest: C. H. DEGROAT,
Clerk.

34 MAY 2, 1870.

This day came the defendant, by its attorney, Mr. Gillet, and filed its plea and affidavit of defense, which are as follows:

Plea.

United State circuit court for the district of Wisconsin.

THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County
ads.
HORATIO J. OLCOTT.

And the said defendant, by J. M. Gillet, its attorney, comes & defends the wrong & injury when, &c., & says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, & of this it puts itself upon the country, &c.

J. M. GILLET,
Def't's Att'y.

Aff't of defense.

United States circuit court for the district of Wisconsin.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County.

DISTRICT OF WISCONSIN,
Fond du Lac County, ss:

Uriah D. Mihills, being duly sworn, says that he is chairman of the County Board of Supervisors of Fond du Lac County, the defendant above-named; that he is well acquainted with the matters & facts upon which this action is founded; that he has fully & fairly stated the case in this cause to J. M. Gillet, the attorney for the defendant in this action, & that the defendant herein has a good and substantial defence to the action of the plaintiff herein, in the whole, as he is advised by said attorney of the defendant herein, after such statement so made by him, & as deponent verily believes.

U. D. MIHILLS.

Sworn & subscribed before me, Ap'l 26, 1870.

J. B. PERRY,
Notary Public, Wis.

35 And now, at this same term, to wit, October term, A. D. 1870, and on the twenty-first day thereof, to wit: On the 26th day of October, A. D. 1870, the following proceedings were had, to wit:

Trial.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County. } At law.

This day came the parties, by their counsel, and the issue herein came

on to be tried. Whereupon a jury was called to try the same, who came, to wit: Michael Bodden, William Langton, James R. Morris, Frederick Wardner, Edward Emery, George K. Gregory, George Bowman, Eleazer Everett, Peter Martineau, Bidwell W. Brown, Charles Fricke, and James Clark, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled, and the trial not being concluded, the same was adjourned until to-morrow morning.

And afterwards, to wit, on the twenty-second day of said term, to wit: On the 27th day of October, A. D. 1870, the following proceedings were had, to wit:

Verdict.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County. } At law.

This day came the parties, by their counsel, and the trial of the issue herein was resumed. And the jurors of the jury aforesaid being charged by the court, on their said oaths respectively, do say that the defendant did not assume and promise in manner and form as the plaintiff hath herein declared against it.

And afterwards, to wit, on the twenty-fifth day of said term, to wit: On the 31st day of October, A. D. 1870, the following proceed-
36 ings were had, to wit:

Judgment.

HORATIO J. OLCOTT
vs.
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County. } At law.

This day came the defendant's counsel, and on his motion it is considered and adjudged by this court now here that the plaintiff take nothing by his writ, and that the said defendant do have and recover of the said plaintiff, Horatio J. Olcott, one hundred and ten dollars and eighty-five cents, its costs about its said defense in this behalf by it expended, and that it have execution therefor.

Judgment roll signed October 31st, A. D. 1870.

EDWARD KURTZ,
Clerk.

Costs, $110 85.

Judgment roll filed October 31st, 1870.

EDWARD KURTZ,
Clerk.

NOVEMBER 8, 1870.

Bill of exceptions signed & filed as follows:

Bill of exceptions.

Circuit court of the United States in and for the eastern district of Wisconsin.

HORATIO J. OLCOTT
against
THE COUNTY BOARD OF SUPERVISORS OF FOND du Lac County.

Be it remembered that, heretofore, to wit, on the 26th day of October, A. D. 1870, at the United States court-room, in the city of Milwaukee, and State of Wisconsin, before the Honorable Thomas Drummond, circuit judge of the United States, and the Hon. Andrew G. Miller, district judge of the United States for the eastern district of Wisconsin, holding a term of the circuit court of the United States for the eastern district of Wisconsin, came as well the said plaintiff, by Finches,
37 Lynde & Miller and J. A. Bentley, his attorneys, and M. H. Carpenter of counsel; and the said defendant, by J. M. Gillet, attorney for the defendant, & Messrs. Bennett & Sloan of counsel for the defendant, and the said cause being ready for trial in its order upon the calendar, and the respective parties, by their respective counsel, having announced themselves ready to proceed with the trial of the said above-entitled cause, a jury of twelve good and lawful men were called, sworn, and duly empannelled, and thereupon the said plaintiff, to maintain the issue on his part read in evidence the following act of the legislature of the State of Wisconsin, approved April 10th, 1867, and published April 26th, 1867, in private and local laws of 1867; page 1015, "An act to authorize the county of Fond du Lac to aid the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railroad from the city of Fond du Lac to the city of Ripon."

"*The people of the State of Wisconsin, represented in senate and assembly, do enact, as follows:*

"SECTION 1. Upon the presentation and delivery to the sheriff of the county of Fond du Lac, of a petition signed by not less than one hundred freeholders of the county, praying that the county of Fond du Lac aid the completion of the Sheboygan and Fond du Lac Railroad to the amount of ninety thousand dollars, and the building of a railroad from the city of Fond du Lac to the city of Ripon to the amount of sixty thousand dollars, accompanied by the request of the Sheboygan and Fond du Lac Railroad Company, signed by the president and secretary of such company, with the corporate seal thereto attached, that a vote be taken in the county of Fond du Lac, at a time named in such request, to decide whether said county will aid the completion of the Sheboygan & Fond du Lac Railroad to the amount of ninety thousand dollars, and also aid the building of a railroad from the city of Fond du Lac to the city of Ripon, to the amount of sixty thousand dollars, the said sheriff shall forthwith cause a notice to be published, in not less than two of the weekly newspapers published and printed in the county, to the effect that, on a day named in
38 the notice, a vote will be submitted to the electors of the county of Fond du Lac upon the question whether the county of Fond du Lac will aid the completion of a railroad, now in the course of construction, from Sheboygan via Glenbeulah to the city of Fond du Lac; and also aid in constructing a railroad from the city of Fond du Lac to

the city of Ripon, which notice, together with this act, shall be published in each of the said newspapers not less than two successive weeks, immediately preceding the day appointed for said vote to be taken; provided, that the vote to be taken under this act shall be taken upon the day, and at the place of the general election, or of the annual town meeting, and at no other time, and shall be taken in all parts of the county on the same day, and shall be by ballot, and be subject to the general laws of this State, regulating elections or town meetings, as the case may be; and provided, further, that the petition and request hereinbefore mentioned shall be delivered to the sheriff not less than twenty days before the day named for the vote to be taken.

"SECTION 2. On the day mentioned in the notice, a vote shall be taken to determine whether the county will aid in said enterprises. The ballots in favor of such aid shall have written or printed thereon the words "For railroad aid," and those opposed, "Against railroad aid." And shall be deposited and kept in a separate box provided for that purpose, and shall be canvassed and return made to the clerk of the board of supervisors of the county as in cases of the election of county officers. And on the Tuesday following the taking of the said vote, the said returns shall be canvassed and the result certified in the same manner as is provided for the canvass and statement of result in case of elections for county officers.

"SECTION 3. If a majority of the votes cast upon the question shall be for railroad aid, then and in such case whenever the Sheboygan and Fond du Lac Railroad is graded continuously from Glenbeulah to the west line of the town of Marshfield, in the county of Fond du Lac, and that fact shall be made to appear by the affidavits of three reputable freeholders of the said town, and the certificate of the president
39 of the company, or corporation at the time owning said railroad, which affidavits and certificate shall be exhibited to and filed with the clerk of the board of supervisors of the county, the said Company or corporation so owning said railroad shall be entitled to receive, within ten days after demand, from the county of Fond du Lac, county orders issued in sums not less than one hundred dollars, to the amount of thirty thousand dollars, ($30,000,) which orders shall be issued by the same officers as other county orders are issued, and shall be made payable to the bearer on demand or at a time not exceeding one year from date, with interest at the rate of seven per cent. per annum, as the board of supervisors may determine; and whenever the said road shall be graded to the west line of the town of Taychedah, and proof thereof shall be made as hereinbefore prescribed (the affidavits to be made by freeholders of the town of Taychedah,) upon the same conditions and subject to the same regulations as in the section above written, the said company owning the road at the time shall be entitled to receive from the county of Fond du Lac a further sum of thirty thousand dollars, ($30,000,) in county orders and payable as above, on demand, or at a time not exceeding two years from date, with interest at the rate of seven per cent. per annum, as the board of supervisors may determine; and when the said railroad shall have been fully completed to the city of Fond du Lac, so as to permit the running of the cars over the same, the company, at the time of such completion owning said road, shall be entitled to receive from the county of Fond du Lac, in county orders, the further sum of thirty thousand dollars, ($30,000,) payable as above on demand or at a time not exceeding three years from date, with interest at seven per cent. per annum, as the board of supervisors may determine.

"SECTION 4. In case a majority of the legal votes cast upon the question shall be for a railroad as aforesaid, then and in that case whenever any company or corporation shall have completed the grading of a line of road between the city of Fond du Lac and the city of Ripon for one-half the distance between said cities, beginning at either end, and shall show the fact by the affidavits of three reputable freeholders of the
40 town in which shall be the point upon the surveyed line of said railroad equi-distant from said cities, and the certificate of the president of the corporation owning said line of railroad at the time, and upon demand made therefor, which affidavits and certificate shall be filed as aforesaid, the said company shall be entitled to receive of the county of Fond du Lac, county orders, to the amount of thirty thousand dollars, drawn in sums of not less than one hundred dollars and payable to bearer on demand, or in one year from the time of demanding the same, with interest at the rate of seven per cent. per annum, as the board of supervisors may determine; and when the grading of said railroad shall have been fully completed between the said cities, and the fact shall appear by the affidavits of three reputable freeholders of the city upon the last half of the line, and the certificate of the president of the company then owning said road, which affidavits and certificate shall be filed with the clerk of the board of supervisors, and upon demand, the said company shall be entitled to receive from the county of Fond du Lac, county orders, to the amount of thirty thousand dollars, in sums of not less than one hundred dollars and payable on demand or in two years from the time of such demand, with interest at the rate of seven per cent. per annum; provided, that the benefit of this section shall be applied to or upon the line of the road between the said cities first graded through half of the distance between the same, and to no other road.

"SECTION 5. The county orders issued under the authority of this act, in the hands of the parties entitled to receive the same from said county or in the hands of any bona fide holder, shall be full and conclusive evidence to establish the indebtedness of the said county in all courts and places whatsoever, according to the tenor of said orders respectively.

"SECTION 6. If, under the provisions of this act, the said county of Fond du Lac shall furnish the aid contemplated in this act, then the railroad companies, or their successors, and assigns, shall transport wheat upon said roads upon the following terms for ten years: Wheat by the car load from the city of Fond du Lac, and from stations east thereof within the county of Fond du Lac to the city of Sheboygan, at a price not exceeding five cents per bushel; and from the city of
41 Ripon to the city of Sheboygan, at a price not exceeding seven cents per bushel; and from all stations between the cities of Fond du Lac and Ripon to Sheboygan at a rate pro rata with the freight from Fond du Lac to Sheboygan; and the companies or corporations owning and building the said roads, their successors and assigns, shall make such arrangements between themselves as shall give full effect to the provisions of this section, and the rates of freight above limited shall also apply to the companies owning or operating the said roads over and upon all other railroads where said companies respectively run their cars for the transportation of freight.

"SECTION 7. The county board of supervisors of Fond du Lac County are hereby authorized and required to levy upon all the taxable property of the county a tax sufficient from time to time to meet the indebtedness of the said county under the provisions of this act, and for the payment

of the same, and the said county orders shall be received for the payment of any such taxes, when offered for that purpose in such sums as to correspond with the amount of taxes levied under this section due from the persons offering said orders.

"SECTION 8. In case said work as hereinbefore specified shall not be completed, and the said orders demanded within two years from the time of the actual taking of the vote upon the same, then in such case the same shall cease to be binding upon said county and of no effect.

"SECTION 9. This act shall take effect and be in force from and after its passage.

"Approved April 10th, 1867."

Which act was admitted by the court under the objection of the defendant's counsel, that the said act was null and void as decided by the supreme court of the State of Wisconsin, in the case of Whiting vs. Sheboygan Railway Co. et als.

And said plaintiff to further maintain the issue on his part did offer and read in evidence one hundred and thirteen county orders or county scrip, issued by the defendant under the aforesaid law, true and accurate copies of which said county orders or county scrip are set out in
42 and annexed to the declaration on file in this cause, and which said copies are hereby made part of this bill of exceptions, amounting in the aggregate to the sum of thirty thousand dollars, which were admitted under the same objection made by defendant's counsel.

And it was admitted by the defendant for the purposes of the trial, that the plaintiff had presented each of the said county orders or county scrip at its maturity to the defendant, and demanded the payment thereof, which payment was refused.

And it was further admitted that there was due for interest upon the said orders in the aggregate, the sum of three thousand five hundred and seventy dollars and sixteen cents.

And thereupon the plaintiff rested his case.

It was not claimed by the plaintiff that the said county orders were issued under any other law than the act aforesaid, and there was no other cause of action in evidence.

And thereupon the presiding justice charged the jury that, the county orders having been issued under the above act of the Wisconsin legislature, entitled "An act to authorize the county of Fond du Lac to aid the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railroad from the city of Fond du Lac to the city of Ripon," approved April 10th, 1867, and, there being no controversy but that this act has been decided by the supreme court of Wisconsin to be an unconstitutional exercise of legislative power, the issue of these orders was unauthorized and void, and we must instruct you that the plaintiff cannot recover; to which charge and instruction the plaintiff did then and there, by his counsel, duly except.

And the plaintiff did then and there, by his counsel, request the court to instruct and charge the jury, that the act of the Wisconsin legislature entitled "An act to authorize the county of Fond du Lac to aid the completion of the Sheboygan and Fond du Lac Railroad, and aid the building of a railroad from the city of Fond du Lac to the
43 city of Ripon," approved April 10th, 1867, is constitutional and valid, and that the county orders or county scrip read in evidence, are valid and binding evidences of indebtedness against the defendant, and that the plaintiff is entitled to a verdict.

Which charge and instruction the court refused to give to the jury, and the plaintiff by his counsel then and there duly excepted to such refusal, and thereupon the jury, under the said instructions of the court, returned a verdict for the defendant.

And because the said exceptions and none of them appear in the record of the proceedings of this cause, we have at the request of the respective parties hereto, set our hands and seals at the city of Milwaukee, in the State of Wisconsin, this eighth day of November, A. D. 1870, to this bill of exceptions.

THOMAS DRUMMOND. [SEAL.]
A. G. MILLER. [SEAL.]

DECEMBER 30, 1870.

This day came A. G. Ruggles, of the city of Fond du Lac, in the State of Wisconsin, and Edwin Slade, of the town of Greenbush, in the county of Sheboygan, and State of Wisconsin, and filed their bond in the penalty of two thousand dollars, conditioned that the plaintiff shall prosecute a writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, which bond is approved by the district judge; which bond is as follows:

Bond.

Know all men by these presents that we, A. G. Ruggles, banker, of the city of Fond du Lac, in the county of Fond du Lac, and State of Wisconsin, and Edwin Slade, of the town of Greenbush, in the county of Sheboygan, State of Wisconsin, a merchant, are held and firmly bound unto The County Board of Supervisors of Fond du Lac County, in the full and just sum of two thousand dollars, to be paid to the said The County Board of Supervisors of Fond du Lac County, certain attorney,
44 executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-third day of December, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately at a term of the circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court, between Horatio J. Olcott, plaintiff, and The County Board of Supervisors of Fond du Lac County, defendant, was rendered against the said plaintiff for the sum of one hundred twenty-one dollars and twenty-five cents, costs, on the 31st day of October, A. D. 1870, and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Horatio J. Olcott, shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

A. G. RUGGLE. [L. S.]
EDWIN SLADE. [L. S.]

Sealed and delivered in presence of—
J. A. BENTLY.

STATE OF WISCONSIN,
Fond du Lac County, ss:

A. G. Ruggles, of said county and State, being duly sworn, deposes & says that he is one of the obligors in the within-named bond; that he is a resident and freeholder within this State; that he is worth the sum of five thousand dollars over and above all his debts and liabilities in property not by law exempt from levy and sale on execution.

A. G. RUGGLES.

Subscribed & sworn to before me, Dec. 27, 1870.

J. B. PERRY,
Notary Public, Wis.

45 STATE OF WISCONSIN,
Sheboygan County, ss:

Edwin Slade, of said county and State, being duly sworn, deposes & says that he is one of the obligors in the within bond, and is a resident and freeholder within this State; that he is worth the sum of four thousand dollars over and above all his debts and liabilties in property not by law exempt from levy and sale on execution.

EDWIN SLADE.

Subscribed & sworn to before me, Dec. , 1870.

J. V. DILLINGHAM,
Notary Public.

Approved by—

A. G. MILLER,
Dis. Judge.

Whereupon a writ of error and citation issued, and a copy of said writ of error lodged for defendant in error.

46 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being a full and complete copy of the record & proceedings in the suit of Horatio J. Olcott vs. The County Board of Supervisors of Fond du Lac County, as a return to the writ of error hereto annexed.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said eastern district of Wisconsin, this tenth day of January, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-fifth.

[SEAL.] EDWARD KURTZ, *Clerk.*

47 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a

judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin, before you, between Horatio J. Olcott, plaintiff, and The County Board of Supervisors of Fond du Lac County, defendant, a manifest error hath happened to the great damage of the said Horatio J. Olcott, as by the complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirtieth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the 95th.

EDWARD KURTZ,
Clerk U. S. Circuit Court, East'n Dist., Wis.

(Indorsed:) Filed December 30, 1870. Edward Kurtz, clerk.

48 [SEAL.] The United States of America to The County Board of Supervisors of Fond du Lac County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America for the eastern district of Wisconsin, wherein Horatio J. Olcott is plaintiff in error, and you are defendant in errror, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirtieth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

A. G. MILLER,
District Judge.

I accept service of above citation, this tenth day of January, A. D. 1871.

J. M. GILLET,
Att'y for Def't.

(Indorsement on cover:) No. 485. Horatio J. Olcott, plaintiff in error, vs. The County Board of Supervisors of Fond du Lac County. E. Wisconsin C. C. U. S. Filed 16th January, 1871.

55

Supreme Court of the United States.

HORATIO J. OLCOTT,

Plaintiff in Error,

vs.

THE COUNTY BOARD OF SUPERVISORS

of Fond du Lac Co.

Argument for Plaintiff in Error, delivered in Supreme Court of the United States,

BY

MATT. H. CARPENTER,

Of Counsel.

Supreme Court of the United States.

HORATIO J. OLCOTT, PLAINTIFF IN ERROR,
vs.
THE COUNTY BOARD OF SUPERVISORS OF COUNTY OF FOND DU LAC.

ARGUMENT FOR PLAINTIFF IN ERROR,

Delivered in the Supreme Court of the United States, December 15, 1872, *by*

MATT. H. CARPENTER, OF COUNSEL.

This is a writ of error to the circuit court of the United States for the eastern district of Wisconsin.

The action in the court below was assumpsit founded upon certain county orders issued by the county of Fond du Lac in aid of the Sheboygan and Fond du Lac railroad, under and in pursuance of chap. 448, Private and Local Laws of Wisconsin, approved April 10, 1867.

This act authorized the people of the county to vote upon the question whether they would aid the building of the Sheboygan and Fond du Lac railroad, and also a railroad from the city of Fond du Lac to the city of Ripon; that in case the vote should be in favor of granting aid, that county orders should be issued as the road should be completed; thus taking care that the aid granted should be expended in the building of said roads. The sixth section of the act is as follows:

"SEC. 6. If, under the provisions of this act, the said county of Fond du Lac shall furnish the aid contemplated in this act, then the railroad companies, or their successors and assigns, shall transport wheat upon said roads upon the following terms for ten years: Wheat by the car load from the city of Fond du Lac, and from stations east thereof within the county of Fond du Lac, to the city of Sheboygan, at a price not exceeding five cents per bushel; and from the city of Ripon to the city of Sheboygan, at a price not exceeding seven cents per bushel; and from all stations between the cities of Fond du Lac and Ripon to Sheboygan, at a rate *pro rata* with the freight from Fond du Lac to Sheboygan; and the companies or corporations owning and building the said roads, their successors and assigns, shall make such arrangements between themselves as shall give full effect to the provisions of this section, and the rates of freight above limited shall also apply to the companies owning or operating the said roads over and upon all other railroads where said companies respectively run their cars for the transportation of freight."

Thus it will be seen that the act carefully guarded the rights of the public, and created a contract between the companies accepting such aid and the State, for the benefit of *the people of the county*. At an election held under the act the county voted to grant the aid, and the orders in suit were issued in strict conformity with the act; and they are held by the plaintiffs, who are *bona fide* holders. Subsequent to the issue of these orders, but prior to the trial of this case in the court below, the supreme court of the State of Wisconsin, in the case of Whiting *vs.* Fond du Lac Co., (25 Wis., 188,) held this act to be void, upon the ground that the building of a railroad, to be owned and operated by a corporation in the usual way, is not an object in which the public are interested, and therefore that the act in question was void, for the reason that it authorized the levy of a tax for a *private* and not a *public* purpose.

The court below in this case held the decision of the

State court in Whiting *vs.* Fond du Lac Co. to be binding upon the Federal courts, and *therefore* held the act void; expressing no opinion, however, as to the correctness, in principle, of the State court decision.

Two questions are, therefore, presented:

(1.) Was the decision of the State court binding upon the Federal court? And—

(2.) If that decision is not conclusive, is it correct in principle?

I.

It is respectfully submitted that the learned circuit judge erred in yielding to the decision of the State court as a binding authority, and to settle this question it becomes necessary to examine the principle upon which the conclusive effect of the decisions of State courts, in certain cases, rests.

The Constitution of the United States created a sovereign government, with three great departments, legislative, executive, and judicial. Over all the subjects committed by the Constitution to the General Government its authority is ample, plenary, supreme. No one department, nor all combined, can constitutionally defeat or abdicate this supreme, sovereign control in any particular, or in regard to any subject. The entire judicial power of the Union is vested in this court, and in such subordinate tribunals as Congress has and may create and establish. The jurisdiction vested in the Federal courts by the Constitution cannot be taken away, nor can it be limited, restricted, or maimed by an act of Congress. Litigation between citizens of different States is one of the subjects which, by common consent, is committed to the Federal courts by the Constitution itself; and if there be a single case in which the citizen of one State may not have his suit against the citizen of another State heard and determined by a Federal court, it

is because Congress has not done its duty by creating a court to take original jurisdiction of it. This court has, indeed, held that inasmuch as Congress may under the Constitution create as many subordinate courts as it pleases, and parcel the Federal jurisdiction among them at pleasure, it follows that the circuit courts, for instance, can only exercise such jurisdiction as Congress has conferred upon them; and hence the act of Congress which forbids the circuit court to entertain jurisdiction of an action founded on a contract in which the plaintiff is an assignee, unless his assignor could maintain such action, if he had not made the assignment, is valid and constitutional. This decision must be vindicated upon the ground that Congress has reserved such a case to be committed to some other Federal court which it intends hereafter to establish, and can be vindicated upon no other ground. No one will deny that the Constitution confers upon the judicial department—that is, this court, and subordinate courts to be established by Congress—jurisdiction of every case between citizens of different States; and no one can deny that it is the clear duty of Congress to create and establish courts for the trial and determination of every such suit. All that can be said is, that Congress has not as yet performed this constitutional duty.

In Martin *vs.* Hunter's Lessees, (1 Wheaton, 329,) this court say:

"The judicial power *must*, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose that, under the sanction of the Constitution, they might defeat the Constitution itself. * * * If, then, it is the duty of Congress to vest the judicial power of the United States, it is a duty to vest *the whole* judicial power. The language, if imperative as to one part, is imperative as to all."

Congress may confer upon the circuit courts the jurisdiction to determine only a particular class of causes, reserving, of course, all others for some other court to be subsequently created, but it cannot confer jurisdiction over a certain class of causes in which the parties are citizens of different States, and yet compel those courts to determine such causes otherwise than by an exercise of the reason and judgment of the judges of such courts. Congress can no more declare that the circuit court, in deciding a case committed to it, shall follow the decision of a State court, than it may say that it shall follow an English or French court; or that the court shall decide such cause according to a pronounced opinion or judgment of Congress. Judicial power is the power to decide what are the rights and duties respectively of the parties to a particular litigation, growing out of such of their transactions as the case involves; and this power is by the Constitution conferred upon *the courts*, and *denied to Congress. Congress cannot control the courts in the exercise of this power.* The decision must be the result of the opinion and judgment of the judges who pronounce it. They must be guided by their own reason, and must act upon their own consciences. Congress cannot constitutionally say that a Federal court shall act otherwise; nor can the courts themselves agree to act otherwise, *or act otherwise* without violating the Constitution, and disregarding their constitutional duty. If the judges of a circuit court believe that the plaintiff, in a cause properly before them for determination, ought to recover, Congress cannot authorize them to decide otherwise, either in obedience to an act of Congress or in pursuance of the decision of any State tribunal. And it is equally clear that the judges themselves have no more right to do this than Congress has to authorize or compel them so to do.

The interests and necessities of commerce, more than

all things else, suggested "the more perfect union" which the Constitution was designed to establish and perpetuate. Two provisions of that instrument accomplished this result, and made the people of all the States one people, one nation, for all the purposes of commercial intercourse, and removed the danger of conflicting enactments and decisions certain to result from thirteen or thirty independent governments, all acting upon and declaring the rights of parties based upon contracts.

These provisions are:

(1.) No State shall pass any law impairing the obligation of a contract.

(2.) Every citizen of one State may sue a citizen of another State in a court of the Union.

A citizen of New York enters into a contract with a citizen of Indiana or California, which is to extend through half a century, as confidently as though the laws and courts of New York extended to those States, because he knows the shield of the Constitution is over his contract; after the contract is entered into, no State legislature can impair its obligation, and that obligation he may have declared and enforced in a Federal court. This makes us one people; and this end is never to be lost sight of, nor can it be frittered away, for it is secured by the Constitution.

These considerations prepare us to determine what laws of a State can constitutionally be made rules of decision in the Federal courts.

The Judiciary act, sec. 34, provides:

"That *the laws* of the several States, except, &c., shall be regarded as *rules of decision* in trials at the common law in the courts of the United States *in cases where they apply*."

1 St., p. 92.

The question is, when do State laws apply, or, in other words, in what cases must the Federal courts apply State laws to causes pending before such courts?

Confining our inquiry to cases involving the validity or construction of contracts, it is manifest that only such laws of the State, whether written or unwritten, as were in force and operation *when the contract was made*, ought to be applied by the Federal courts. When a citizen of New York enters into a contract with a citizen of Wisconsin, all the laws of either State which can affect the contract must be deemed to have been in the minds of the contracting parties; and the contract must be presumed to have been entered into with full knowledge of the effect of such laws upon the contract. To this extent *the law* forms *a part of the contract*, and effect should be given to the law, because in no other way can the court secure to each party the exact and precise right which was intended to be secured to him by the contract at the time it was made. This will be conceded in regard to a State statute passed after the making of the contract. But it will be said that all the law, written and unwritten, existing at the date of the contract, entered into it, and that in cases where the courts of the State had not, before the contract was made, declared what the unwritten law was, a subsequent decision by the State court, pronouncing what the unwritten law then was, or giving construction to a State statute passed before the contract was made, must be accepted by the Federal court as conclusive.

This we controvert, because it amounts to a substantial denial of the right secured by the *Constitution* to the creditor of having his contract construed by the Federal courts. The moment a citizen of New York enters into a contract with a citizen of Wisconsin, in that State his rights are vested. His constitutional right to have the contract con-

strued and enforced by the courts of the Union is perfect. True, those courts must apply the law of the State as it existed at the time the contract was made, *but the Federal court must determine what that law was;* and to say that it must follow a decision made by the State court, *subsequent to the contract, and at variance* with the general principles recognized by all courts *when the contract was made*, is substantially to deny the creditor his constitutional right.

Take the case on argument to illustrate our meaning. The constitution of the State and this statute entered into and now form parts of these securities. If either the constitution or the statute had received construction by the State court prior to the making of these securities, then that construction should be deemed to have entered into the contract, because the parties must be deemed to have contracted with reference to it, *and it is immaterial whether the construction actually given was correct or incorrect.* The parties knew what it was, and contracted with reference to it, because it was the law of the State. But if no construction had been given prior to the making of these securities, then all that the parties can be said to have contemplated is a *proper* construction; *and the creditor acquired the right to have that construction given by the Federal court.*

To say that a foreign creditor contracts with a citizen of Wisconsin, not only with reference to the actual existing law of the State at the time, but also with reference to whatever the State court may *thereafter* decide, is at war with the whole theory of the necessity for a Federal judiciary. It is a mere insult to a foreign creditor to say to him, "You may bring your action in our courts; but we are bound to decide as the State courts would, and we are bound by all the decisions they have made since your contract was

entered into." If this is the case, the creditor might as well sue in the State as in the Federal court. In other words, he is practically deprived of his constitutional right to have the judgment of a Federal court upon the construction and effect of his contract.

The broad principle ought to be declared by this court, that no State court decision affecting the validity of a contract, *made after the contract was entered into*, is conclusive upon the Federal courts. All the decisions in this court are consistent with this principle, but the principle itself has not been expressly declared. The State courts may settle the law of the State, right or wrong; and after they have settled it, every person contracting within the State is bound by it, because it is the law of the State, and enters into his contract. But an erroneous decision of a State court *subsequent* to the contract ought not to deprive a foreign creditor of his just right. And in no way can this be prevented but to plant the doctrine upon its proper foundation, and say that decisions of the State courts pronounced subsequent to the contract are not conclusive upon the Federal courts. If they are, the machinery of a double judiciary, State and Federal, *is a mockery and a snare.*

II.

But there is another, and, as we believe, a perfectly conclusive reason why the decision of the State court ought not to preclude this question. That decision, Whiting *vs.* Fond du Lac County, cannot be regarded as the declaration of a principle of local law. No particular provision of the constitution of Wisconsin is relied upon to invalidate the statute. The power of taxation, by the constitution of that State, is unlimited as to objects. If the legislature of Wisconsin cannot pass such a statute, then no such statute

can be passed by any State in the Union, and all the subsidies granted by Congress in aid of railroads are wholly void. The State court declared the statute void, upon the ground that the building of a railroad, to be owned and operated in the usual way by a corporation, was not an object in which the public had any interest. That in fact it was taking the money of A and giving it to B, in violation of the first principles of all governments founded upon free institutions, and not an exercise of the power of taxation at all. There is nothing local in this decision. It tears up by the roots, if it tears up anything, the legislation of every State in the Union and many of the acts of Congress for the last quarter of a century.

Had the decision in Whiting *vs.* Fond du Lac County rested upon any particular provision of the State constitution, *limiting the power of taxation*, the case would have been different. The court say that raising money as contemplated by this statute *is not taxation*. It is taking one man's property and giving it to another. The decision turns not upon any particular provision of the constitution of the State, but upon the nature and character of such aid to a railroad; and the question is the same in one State as another.

It is only those decisions of a State court which settle some principle of *local law* that this court has ever felt bound to follow.

In Swift *vs.* Tyson (16 Pet., 19) this court, by Story, J., speaking of this section of the judiciary act, say:

"And we have not now the slightest difficulty in holding that this section, upon its true intendment and construction, is strictly limited to *local statutes and local usages* of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought not in the

decisions of the local tribunals, *but in the general principles of commercial jurisprudence.*"

The reasoning of that opinion is applicable to this case. Here, it is true, the validity of the contract depends upon the validity of a State statute; but the validity of the statute depends not upon any particular provision in the constitution of Wisconsin, but is to be determined "*upon general reasoning and legal analogies.*"

To the same effect is Yates *vs.* Milwaukee, (10 Wall, 497.) In that case, which related to real estate in Wisconsin, a decision of the State court was much relied upon. But this court said of that decision, that it rested upon general principles, and not upon any rules of law local in their character, and therefore it was not conclusive upon this court.

So, if the validity of a State statute depends—not upon any constitutional provision peculiar to the State—but must be determined by general reasoning upon the powers of government and the nature of taxation, it is not a case resting upon local law. On the contrary the principle is as applicable to one State as to another, and as applicable to the legislation of Congress as to that of a State.

The constitutions of Wisconsin and Illinois are precisely alike in this respect. The supreme court of that State, since the decision of Whiting *vs.* Fond du Lac Co., has decided a similar case exactly the other way, fully considering the question and rejecting the entire reasoning of the court in *Whiting's case*, and holding just such a statute valid under just such a constitution as that of Wisconsin, and enforcing obligations like those sued on in this case.

Now, suppose an action in the Federal court of Wisconsin, and one in the Federal court of Illinois, upon the contracts respectively, and both brought at the same term into this court. This court, if bound by such State decisions, would have to decide one case one way and the other the

other way, *while in every respect which ought to determine the cases they are identical.* This would be a remarkable result to be worked out by the judiciary of a Union established especially to give *uniformity* to commercial law and commercial regulations. Then suppose a case in this court involving the constitutionality of the subsidies granted by Congress in aid of the Pacific railroad. This court would undoubtedly hold, *for that is the law*, that the building of such a road is a proper governmental work, one in which the whole nation is interested, and that such subsidies are valid. Now, in addition to the humiliation of three such decisions, reported, perhaps, in the same volume, it would logically result that this court had determined that after a citizen of New York had entered into a contract in Wisconsin with a citizen of that State, which was valid upon *principle*, and was not impinged by any decision of the State court, at the time it was entered into—a contract which the Federal court, a year after it was made, would have held valid—*had been annulled and destroyed* by a decision of the State court, made long subsequent to the contract, in a case to which the creditor was not a party, of which he had no notice, to which he had never assented, *and which was wholly wrong in principle.* After this, it is submitted that the right of a foreign creditor to sue in a Federal court would not be very valuable.

"When general principles are asserted by the State courts, as a ground for invalidating contracts previously made, they are adopted or disregarded by the Federal courts, as they deem them sound or otherwise, and as justice in the class of cases before them demands. A few of the leading cases so ruling will be referred to."

Emmons, Cir. Judge, in Talcott *vs.* Pine Grove.

He then cites the following cases:

Chicago *vs.* Robbins, 2 Black, 418.

Williamson *vs.* Berry, 8 How, 495.

Swift *vs.* Tyson, 16 Peters, 1.
Rowan *vs.* Runnals, 3 How., 134.
Pease *vs.* Peck, 18 How., 595.
State Bank *vs.* Knoop, 16 How., 69.
Trust Co. *vs.* Debolt, 16 How., 432.
Dodge *vs.* Woolsey, 18 How., 332.
Jefferson Bank *vs.* Skelly, 1 Black, 436.
Gelpke *vs.* Dubuque, 1 Wall., 175.
Von Hoffmana *vs.* Quincy, 4 Wall., 535.
Myer *vs.* Muscantine, 1 Wall., 384.
Havemeyer *vs.* Iowa Co., 3 Wall., 294.

III.

This court has repeatedly decided that if a contract be valid by the law of a State as *understood* and administered by the different departments of the State government at the time the contract was entered into, no subsequent change of decision by the State court can render it invalid.

The Ohio L. & T. Co. *vs.* Debolt, 16 How., 432.
Gelpecke *vs.* Dubuque, 1 Wallace, 175.
Havemeyer *vs.* Iowa Co., 3 Wallace, 294.

These decisions rest upon the principle of morals, as well as of law, that a contract is what the parties understood it to be when they entered into it; and if it was valid and binding when it was made, it is so at all times thereafter.

Prior to the issue of these securities, no decision of the supreme court of Wisconsin had been made in regard to the validity of this particular statute. But that court had in repeated cases declared all the principles necessary to uphold the statute. And no lawyer who, at the time these securities were issued, had read the statute, the constitution of the State, the decisions of the State court, and the decisions of this court, and of all other courts in America, would have regarded it as possible that this statute could be

held unconstitutional. On the contrary, it is safe to say that as the doctrine in relation to the taxing power of the State was held by the supreme court and understood by all departments of the State government when these securities were issued, the statute in question was constitutional and the securities valid.

These securities were issued in February, 1869. And the attention of this court is called to the cases which had been decided, and the principles which had been enunciated by that court, prior to that time, *in regard to the power of taxation.*

In Soens *vs.* Racine, (10 Wis., 280,) decided in 1860, a statute had authorized a tax to secure the lake shore.

It was objected that this was a benefit only to those whose property was saved, and not to the city at large. Dixon, C. J., disposes of this objection as follows:

"No authorities were cited to show that it was taxation for merely private purposes. *If the legislature may by act authorize the common council of a city, at public expense, to provide for the organization of fire departments*, and supply them with proper engines and machinery to prevent the destruction of buildings by fire, it is difficult to perceive why it may not, on the same principle, authorize the levy and collection of taxes for the purpose of staying the destruction of the site of the city itself, when from natural causes, such as a change in the current of a stream, or the action of the waters of the lake, it is in danger of being undermined or swept away. *If the loss of buildings and perishable things be regarded as a public calamity*, worthy and proper to be guarded against at the public expense, is not the loss of both buildings and the soil on which they stand a greater calamity, and more worthy of public protection? There is hardly a city in the State in which there are not fire departments organized and supported, to a greater or less extent, at the expense of the public; yet we never heard it objected that they are mere private enterprises, not authorized by law.

"The circuit judge in his opinion says: 'The tax is levied for the protection of private property, and for an object in which the public have really no interest.' If this be so, does not the argument apply with much more force to all public and statutory regulations for preventing accidents and losses of the former character? *The objects of protection in that case are all private property.* No city has perishable property of its own to warrant these expenditures. Many have none. The object is to defend and save private property. In the present case, however, in addition to the private injuries to be prevented, the public have a direct interest in the preservation of its streets and grounds. *That private property may be, either directly or indirectly, protected or private interests promoted by a given improvement, furnishes no ground for deciding that it is not public.* Public and individual interests are often so intimately connected and blended together *that it is impossible to advance the one without at the same time advancing the other.* There is no public good without at the same time a private benefit. *They are inseparable.* The former cannot exist without the latter. If the latter be not promoted, it proves that it is not a public good. That which affects the interest of an entire community must, to a greater or less degree, affect the interest of each member of it. To determine whether a matter is a public or merely private concern, we have not to determine whether or not the interests of some individuals will be directly promoted, but whether those of the whole or the greater part of the community will be so. That such was the character of the improvements provided for by the act there can be no doubt. The entire city was interested in staying the further progress of destruction caused by the action of the waters of the lake."

In Brodhead *vs.* Milwaukee, (19 Wis., 652,) decided in 1865, Dixon, C. J., defines the nature of the power of taxation as follows:

"The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a mere private purpose. It cannot, in the

form of a tax, take the money of the citizen and give it to an individual, *the public interest or welfare being in no way connected with the transaction.* The objects for which the money is raised by taxation must be public, and such as subserve the common interest and well being of the community required to contribute." * *

"To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable. So CLEAR AND PALPABLE AS TO BE PERCEPTIBLE BY EVERY MIND AT THE FIRST BLUSH."

Now, suppose the plaintiff, before purchasing these securities, had taken a corps of lawyers and gone to Wisconsin to investigate the constitutionality of this statute and the validity of the securities. He would have found these two decisions, one made nine years and the other four years before, in which the supreme court of the State, in one case, declare the true rule for determining whether an object be of public or private concern, as follows:

"To determine whether a matter is a public or mere private concern we have not to determine whether or not the interests of some individuals will be directly promoted, but whether those of the whole or of the greater part of the community will be so."

And in the other case the court say:

"To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable. So CLEAR AND PALPABLE AS TO BE PERCEPTIBLE BY EVERY MIND AT THE FIRST BLUSH."

Now certainly, after examining these two decisions, the only question that remains to be considered to settle the constitutionality of this statute is whether the building of a railroad through the county of Fond du Lac, connecting

it with navigation of the great lakes, is an object in which the public have an interest; or, to put it in the precise language of the court, whether "the absence of all *possible* public interest" in the completion of such a road is "*so clear and palpable as to be perceptible by every mind at the first blush.*"

Had the plaintiff, with his lawyers, been on the ground conducting this investigation, it is not probable that the inquiry would have been pushed beyond this point. A lawyer would have said, *that* question has been settled in every American court for more than half a century. But if he had had the curiosity to see what *the courts of Wisconsin had said about it*, he would have found:

(1.) That the constitution of Wisconsin, like the constitution of every other American State, forbids the taking of private property *except for a public use;* that is, a use in which the *public have an interest.*

(2.) That the nature and conditions of this taking and holding were expounded by the supreme court of the State, (in Pratt *vs.* Brown, 3 Wis., 612, decided in 1854,) as follows:

"The incorporation of companies for the purpose of constructing railroads or canals affords the best illustration of the delegation of the power to exercise the right of eminent domain, by the condemnation and seizure of private property *for public use*, upon making just compensation therefor. *It is admitted that the only principle upon which such delegation of power can be justified is, that the property taken by these companies is taken for* THE PUBLIC USE. No one has yet advanced the doctrine that the legislature can exercise the right of eminent domain in the taking of private property of one person and giving it to another private person, even upon full compensation, *unless the public use require it.*"

(3.) That the court in Robbins *vs.* Railroad Co., (6 Wis.,

641,) decided in 1858, sustained the taking of private property for the use of a railroad company, and employed the following language:

"The power given by the legislature to corporations for railroad purposes, to take the land of private persons *for the use of the company*, is a delegation of the power or right of eminent domain. The land taken for the purpose of constructing the road is deemed to be taken for *the public use*, and for which compensation is to be made, as well as for all damages occasioned by such taking."

That the court by Dixon, C. J., in Hasbrook *vs.* Milwaukee, (13 Wis., 13,) decided in 1860, said:

"The power of municipal corporations, when authorized by the legislature to engage in works of internal improvement, SUCH AS THE BUILDING OF RAILROADS, canals, harbors, and the like, or to loan their credit in aid thereof, and to defray the expenses of such improvements, and MAKE GOOD THEIR PLEDGES *by an exercise of the power of taxing the persons and property of their citizens, has always been sustained on the ground that such works, although they are in general operated and controlled by private corporations, are nevertheless, by reason of the facilities which they afford for trade, commerce, and intercommunication between different and distant portions of the country, indispensable to the public interests and public functions.* It was originally supposed that they would add, *and subsequent experience demonstrated that they have added, vastly and almost innumerably to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of cities, towns, villages, and rural districts through which they pass, and with which they are connected.* It is in view of these results, *the public good thus produced*, and *the benefits thus conferred* upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them *matters of public concern*, for the accomplishment of which *the taxing power might lawfully be called into action.* It is in this sense

that they are said to fall so far within the purposes for which municipal corporations are created, that such corporations may engage in, or pledge their credit for, their construction."

These decisions had all been made, reported, and published prior to the issue of these securities, and settle the following propositions:

(1.) That taxation may be exercised for any purpose in which the public have an interest.

(2.) That in no case can the courts restrain the collection of a tax authorized by the legislature unless the absence of all *possible* public interest in the object to be promoted "*is so clear and palpable* as to be perceptible by *every mind* at the *first blush*."

(3.) That the building of a railroad, to be owned and operated by a corporation in the usual way, *is an object in which the public have an interest;* and because of such public interest, land may be condemned for its use under the right of eminent domain, which can only be exercised on behalf of a public use.

It may be said that in Hasbrook *vs.* Milwaukee, (13 Wis., 15,) from which we have quoted the language of Dixon, C. J., the improvement was a public harbor and not a railroad. This is true. But for the purpose of showing that the power of taxation might be exercised to build a harbor, the court resorts to the instance of taxation in aid of a railroad, as being one of those cases where the right to tax was so clear that no one would question it, and from that, *as from an axiom or universally conceded proposition*, the court deduces *the right to tax for a harbor*. This shows how the court, and everybody else, understood that subject; and this court says that—

"If a contract, when made, was valid by the laws of the State as then *expounded* by all departments of the government *and administered in its courts of justice*, its validity

cannot be impaired by any subsequent action of legislation *or decision of its courts*, altering the construction of the law."

To settle a question of State law touching the validity of a contract, it is not necessary that the precise point should have been directly involved in a cause and expressly decided by the courts. If by common consent of courts, bar, and business men, the principle is assumed as of undoubted soundness, recognized, acted upon, *and reasoned from as an axiom by the highest judicial courts of the State*, that is enough to authorize a business man, a citizen of another State to act upon it, and the Federal courts must protect him and enforce his rights accordingly. Of course the case is much stronger where, *as in this case*, the doctrine as understood to exist in a particular State is well settled by repeated decisions of the courts of the Union and of the other States. It might well be claimed that, to resist the presumption of such a principle being part of the law of a particular State, some express enactment or adjudication ought to be shown.

In the reargument of the case, Whiting *es.* Fond du Lac County, after the opinion of the court was given, the inconsistency of its doctrine with that of these former decisions was pressed upon the court; and in the opinion subsequently delivered, affirming the original opinion in the case, the court attempt to escape from the dilemma as follows:

"And first, as to the cases in this court, from the opinions in which counsel quote so largely, and upon which they rely so confidently, it seems hardly necessary to add to our former remarks. Those cases are as clearly distinguishable from this as ever one case was from another. They were all cases of taxation for the *direct and immediate benefit* of the public: to improve a harbor, which was public property; to save from destruction the streets and site of a popu-

lous town, also public property; and to secure soldiers to protect and defend the country in time of war, always recognized as a public object of the greatest magnitude and importance. With these objects in view, it seems very strange that the language of the court should be severed entirely from the facts of the case before it, and the attempt be made to apply it to a wholly different state of facts, when the object of the tax is to promote *strictly individual*, and *to add to or enhance the value of merely private property*.

"And particularly does this seem strange, when the power to tax for any private purpose was expressly denied in the opinions. Such mode of interpreting and applying judicial opinions is well known to be unauthorized. It is a mode of misconstruing them, against which, *when counsel are so disposed*, it is impossible for the court to guard or protect itself. When, therefore, it was said in those cases, that any, the slightest, public interest or benefit would sustain a tax, such statement is to be considered in connection with the facts of the case upon which it was made; and when it appears from these facts *that the interest or benefit spoken of was the direct and immediate interest or benefit of the public* to be promoted by the work, and not such as would *incidentally or remotely accrue* to the community at large from the accomplishment of it, it is to such direct and immediate public benefit and interest that the statement is to be applied, as much as if it had been expressly so limited. This is a familiar rule of construction, and one which cannot be departed from by counsel with safety to suitors, or with justice to the court. It is a rule which excludes all such unfounded inferences as that attempted to be drawn here. The court, in those cases, being called upon to define what *direct and immediate public interest or benefit* would sustain a tax, did so in the language quoted. The question whether a public benefit or interest of some other or different kind, as that which is *indirect* or *incidental* to the prosecution of some enterprise or business of a private character, would sustain a tax, was not then before the court, nor was the court required to consider it, or to expressly qualify its language with reference to it."

The surprise here expressed by the court at the conclu-

sions which, in argument, we attempted to draw from the previous decisions of the court, cannot exceed the surprise which was caused in us by this opinion. It will be seen that the court here attempt to distinguish between the *direct* and incidental benefits of any work or object in aid of which the power of taxation is invoked; and the court hold that to sustain a tax the benefits to the public must be direct, and if the benefit is only incidental the tax cannot be sustained. And the court assert that the cases of Seons *vs.* Racine, Hasbrook *vs.* Milwaukee, and Brodhead *vs.* Milwaukee were all cases in which a direct and not a mere incidental benefit resulted to the public, and that the tax in those cases was sustained upon the ground that the benefit was direct.

An examination of the three cases above mentioned will show:

(1.) That when they were before the court they were not considered cases in which a *direct* benefit would result to the public; and

(2.) That they were not, nor was either of them, such a case.

The precise ground upon which the court attempt to vindicate the doctrine of Whiting's case was urged upon the court in Seons *vs.* Racine, and was put to rout and confusion by the opinion of the court.

The objection was repeated in Hasbrook *vs.* Milwaukee, and was rejected by the court in the following language, by which the court in express words define the *nature of benefit* which will sustain a tax:

"It was originally supposed that they [railroads] would add, *and subsequent experience has demonstrated* that they have added, *vastly and almost immeasurably* to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of the cities, towns, villages, and

rural districts through which they pass, and with which they are connected. It is in view of these results, the public good *thus produced*, and the benefits *thus conferred* upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them matters of public concern, *for the accomplishment of which the taxing power might lawfully be called into action.*"

It is manifest from this language that the court considered the *incidental* benefits sufficient to uphold the tax. The court say that railroads have added to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants, &c., all incidental, as distinguished from direct pecuniary benefits, and then add:

"It is in view of *these* results, the public good *thus produced*, and the benefits *thus conferred*, * * * that courts have been able to pronounce them matters of *public concern, for the accomplishment of which the taxing power might lawfully be called into action.*"

It is too plain to be questioned that the court, when they pronounced the opinion last quoted from, regarded incidental benefits as sufficient to uphold a tax. Now, let us inquire what was the case in which this language was employed. An act of the legislature had authorized a tax to build a harbor at the port of Milwaukee. The city had no *direct* interest in the harbor, more than the county of Fond du Lac has in this railroad. The harbor is on Lake Michigan, one of the great navigable waters of the United States, under control and jurisdiction of Congress. The city could levy no tolls or other tax upon commerce carried on at that port; the city had no stock in the harbor, nor ownership over it; no *direct pecuniary* benefit could result to the city of Milwaukee from the harbor. The city of Milwaukee had no more interest in the harbor than Madison, Janesville, or any other inland city of the State had, and no pecuniary

return could be made to the city from the harbor as a *direct* benefit. The tax was sustained upon the general reasoning of the opinion that the *incidental* benefits resulting to the public from a railroad justified a tax, and *hence* a tax to build the harbor was lawful. And it is safe to say that Milwaukee to-day would, if compelled to the alternative, give up her harbor rather than her railroads. So in Seons *vs.* Racine, the city had no *direct* benefit from the road. No tolls were, or could be, levied upon it; no money was, or ever could be, brought to the treasury of the city from the road. And the people of Racine had no more right to the street than the people of every other town in the State possessed. The street was a public highway of the State, under control of the State, might be discontinued by the State, and the reasoning by which in that case the court sustained the tax altogether ignored the idea—yes, repudiated the idea—that the city had any *direct pecuniary* benefit from the street. The court maintained that such *direct* interest was wholly unnecessary, and to prove it, cite the fact that cities are permitted to provide by taxation for fire departments, engines, &c., &c., and the court say:

"No city has perishable property *of its own* to warrant these expenditures. Many have none. The object is to defend and save private property," &c.

Indeed, there is no ground upon which it can be maintained that the decision in Whiting *vs.* Fond du Lac County is not in direct conflict with the former decisions of the same court. And this is all that we need to demonstrate to deny its conclusive authority in the courts of the Union, when dealing with contracts entered into under the former decisions and before the latter decision was made.

The attempt of the court to distinguish between a tax to preserve a street in Racine, or build a harbor in Milwaukee,

and a tax to build or preserve a railroad in Fond du Lac county, is utterly futile. In neither case have the public any *direct* pecuniary interest; and in all of them they have the same indirect interest. And if this indirect interest will justify taxation for a street and a harbor, it will also, and for the same reason, justify taxation to build or *preserve* a railroad. It is perfectly safe to challenge the astutest mind to draw the slightest distinction in principle between these cases. And to say that, after the supreme court of Wisconsin decided that the legislature may authorize taxation to preserve a street in Racine or build a harbor in Milwaukee, it has not decided that taxation may be exercised to build a railroad in Fond du Lac county, is as absurd as it would be to say that after that court has decided that replevin would lie for a horse, it is still an open question whether replevin will lie for an ox.

I need not stop with asking whether my client was justified in believing from these decisions of the State court that this statute was constitutional; but it is submitted that such conclusion cannot be resisted.

Without trammelling ourselves with the technical construction of syllogisms, let us see how a logician would deal with the subject, and how the different propositions established by the State court will look when put into short sentences.

Confining ourselves strictly to the decisions of the State court, promulgated before these securities were issued, we find:

(1.) Property cannot be taken under the power of eminent domain except for an object in which the public have an interest.

Pratt *vs.* Brown, 3 Wis., 612.

(2.) Property may be taken by the right of eminent domain for the use of a railroad to be owned and operated

by a corporation in the usual way, *because such taking is* for a *public use;* that is, a use in which the public is interested.

Robbins *vs.* Railroad, 6 Wis., 641.

(3.) Taxation may be authorized for any object in which the public have *the least possible interest*, and the courts cannot restrain the levy of a tax authorized by the legislature unless the absence of *all possible public interest* is so clear and palpable as to be perceptible by every mind at the first blush.

Brodhead *vs.* Milwaukee, 19 Wis., 652.

Seons *vs.* Racine, 10 Wis., 280.

These propositions, found in the cases cited, were the law of Wisconsin in 1869, and they do not justify the doctrine of the court in the subsequent case now relied upon, viz:

(4.) A tax authorized by the legislature for the purpose of contributing money to aid in the building of a railroad to be owned and operated by a corporation in the usual way is unconstitutional and void, *because the public have no interest in such railroad.*

Whiting *vs.* Fond du Lac Co.

It is impossible not to see that the latter case is in direct opposition to the former decisions. To condense the doctrine of these cases into yet narrower compass, they furnish the following *mosaic:*

(1.) A tax may be authorized for any object in which the public have *the least possible interest.*

(2.) The power of eminent domain can only be exercised in aid of an object in which the public *have some interest.*

Conclusions:

(1.) Therefore the power of taxation *cannot* be exercised

in aid of a railroad, *because the public have no interest in it;* and,

(2.) The power of eminent domain *may* be exercised in favor of a railroad, *because the public have an interest in it.*

This is the logic to which, it is said, this court must yield submission, if not assent.

To justify the exercise of the right of eminent domain, there must be a taking of property for a *public use.* This is the provision of the constitution. There is no such *express* limitation upon the power of taxation. It is conceded that the power *ought not to be exercised* for any other purpose; but the constitution does not in words *say it shall not be.* And to hold that an express limitation upon the power of the legislature is less entitled to favor in the courts than one which the courts deduce from general principles of natural justice, is to say that all written constitutions are not only useless, but absolutely pernicious. The right of the citizen to save his property from being taken for other than a public use, which is embodied in the written constitution, can be overridden, but his right to save his money from being applied through the process of taxation to other than a public use, *which is not embodied in the constitution,* can be enforced in the courts. Then the citizen would be safer without a constitution than he is with one.

IV.

Thus far we have confined ourselves to an examination of the actual state of the law of Wisconsin at the time these securities were issued; and have shown that, regarded in the light of all previous decisions in Wisconsin, *these securities were valid when issued.* Here we might safely stop, this court having repeatedly decided that securities valid by the law of the State when issued cannot be invalidated by any subsequent action of the legislature or courts of the State.

But the importance of the principle involved, *as well as respect for the high tribunal which has attempted to strike it down*, will justify, *if they do not demand*, an examination of the principles upon which a correct judgment upon this subject rests.

It is of the highest importance that the railroads of the several States, over which our entire inland commerce is transported, and which have been aided by an exercise of the right of eminent domain, upon the ground that they were great public works, *subject at all times to governmental control, like other highways*, should not be allowed to slip away from that control upon the ground that they are private property, and not otherwise amenable to regulation than a farm or other mere private estate. Duty to the public and fidelity to our client dictate that we should not overlook so important a subject. Indeed, there is no pending question of greater practical importance to the American people than that we are now to consider.

In the first place, it is evident that a railroad is either a highway, held by the corporation in trust for the public use, or it is mere private property, owned by the stockholders in absolute right. One of these theories must be true; and whichever is held to be true, it will follow that the other is untrue.

Whichever is adopted, certain conclusions will necessarily follow:

(1.) If it be a highway, then the legislature can, in its discretion, authorize a county or a town to aid in the construction of such road, and raise money by taxation for that purpose; because the money is raised for a public purpose. And it also follows that as a highway it may be controlled and regulated by the legislature. Its use may be controlled, and a tariff of rates may be fixed.

(2.) If it be *not* a public highway, then the public have

no other control over it than can be exercised over any mere private estate.

And considering the extent of our railroad system, the amount of capital invested in railroads, and the intimate relations they sustain to commerce and to all the transactions of life, the importance of settling this question correctly cannot be overestimated. I ought rather to say that the disastrous consequences to result from *unsettling* the law upon this subject cannot be overestimated; for, fortunately, it has been settled for many years, and by adjudications of the courts of every State in the Union. Railroads are declared to be *public highways* by a current of decisions which cannot be resisted, and upon which the decision in Whiting *vs.* Fond du Lac, and a similar decision in Michigan, have not produced even a ripple.

The legal character of a railroad was fully considered at the beginning of these great improvements. They could not be built without a resort to the power or right of eminent domain; and it was objected that railroads, to be owned and operated by corporations, were *private* and not *public* enterprises; and, therefore, the right of eminent domain could not be exercised for their benefit.

Beekman *vs.* The Saratoga, &c., (3 Paige, 45,) was one of the earliest cases. It turned upon this *very point*.

The clear and conclusive language of the Chancellor has often been quoted and never overruled. He says, speaking of the right of eminent domain:

"All separate interests of individuals in property are held of the Government under this tacit agreement or implied reservation. Notwithstanding the grant to individuals, the *eminent domain*, the highest and most exact idea of property, remains in the Government, or in the aggregate body of the people in their sovereign capacity; and they have the right to resume the possession of the property, in the manner directed by the constitution and laws of the State,

whenever the public interests require it; this right of resumption may be exercised not only where the safety, but also where the *interest* or even *the expediency* of the State is concerned; as where the land of an individual is wanted for a road, canal, or other public improvement. The only restriction upon this power, in cases *where the public* or the inhabitants of any *particular section* of the State have an interest in the contemplated improvement as citizens merely, is that the property shall not be taken for the public use without just compensation to the owner, and in the mode presented by law. The right of *eminent domain* does not, however, imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, *where the public interest will be in no way promoted by such transfer.* And if the legislature should attempt this, to transfer the property of one individual to another, *where there could be no pretence of benefit to the public* by such exchange, it would probably be a violation of the contract by which the land was granted by the Government to the individual, or to those under whom he claimed title, and repugnant to the Constitution of the United States. But if the *public interest can be in any way* promoted by the taking of private property, *it must rest in the wisdom of the legislature* to determine whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of *eminent domain*, and to authorize an interference with the private rights of individuals for that purpose. (2 Kent's Com., 340.) It is upon this principle that the legislature of several of the States have authorized the condemnation of the lands of individuals for mill-sites, where, from the nature of the country, such mill-sites could not be obtained for the accommodation of the inhabitants without overflowing the lands thus condemned. *Upon the same principle of public benefit*, not only the agents of the Government but also individuals and corporative bodies have been authorized to take private property for the purpose of making public highways, *turnpike roads*, and canals; of erecting and constructing wharves and basins; of establishing ferries; of draining swamps and marshes, and of bringing water to cities and villages. *In all such cases*

the object of the legislation of power is the *public benefit derived from the contemplated improvement*, whether such improvement is to be effected directly by agents of the Government, *or through the medium of corporate bodies, or of* INDIVIDUAL ENTERPRISE. And according to the opinion of Chief Justice Marshall, in the case of Wilson *vs.* The Black-Bird Creek Marsh Company, (2 Peters' Rep., 251,) measures calculated to produce such benefits to the public, though effected through the medium of a private incorporation, are undoubtedly within the powers reserved to the States, provided they do not come in collision with those of the General Government. *It is objected, however, that a railroad differs from other public improvements*, and particularly from turnpikes and canals, because travellers cannot use it with their own carriages, and farmers cannot transport their produce in their own vehicles; that the company in this case are under no obligation to accommodate the public with transportation; and that they are unlimited in the amount of tolls which they are authorized to take. *If the making of a railroad will enable the traveller to go from one place to another, without the expense of a carriage and horses*, he derives a *greater benefit* from the improvement than if he was compelled to travel with his own conveyance *over a turnpike road at the same expense*. And if a mode of conveyance has been discovered by which a farmer can procure his produce to be transported to market at half the expense which it would cost him to carry it there with his own wagon and horses, there is no reason *why the public should not enjoy the benefit of the discovery*. And if any individual is so unreasonable as to refuse to have the railroad made through his land, for a fair compensation, *the legislature may lawfully appropriate* a portion of his property, *for the public benefit*, or may authorize an individual or corporation thus to appropriate it, upon paying a just compensation to the owner of the land for the damage sustained. *The objection that the corporation is under no legal obligation to transport produce or passengers upon this road at a reasonable expense is unfounded in fact.* The privilege of making a road and taking tolls thereon is a franchise, as much as the establishment of a ferry or a public wharf and

taking tolls for the use of the same. *The public have an interest in the use of the railroad, and the owners may be prosecuted for damages sustained* if they should refuse to transport an individual or his property, without any reasonable excuse, upon being paid the usual rate of fare. The legislature may also from time to time regulate the amount of tolls which it shall be lawful to take, in the same manner as they may regulate the amount of tolls to be taken at a ferry, or for grinding at a mill, unless they have deprived themselves of that power by a legislative contract with the owners of the road."

In Blodgett *vs.* The Mohawk & Hudson Railroad Company, (18 Wend., 1,) this question came before the court of appeals, and the principle of Beekman *vs.* The Saratoga and Schenectady Railroad Company was affirmed by the decisive vote of 19 to 4.

Senator Mason, delivering the opinion of the court, says:

"I might perhaps be permitted to observe that little remains to be said after the very able and elaborate argument of the counsel in the case of Beekman *vs.* The Saratoga and Schenectady Railroad, (3 Paige, 45,) and the no less able and satisfactory opinion of the present chancellor, delivered on that occasion. *Indeed, after the decision in that case, I had supposed there was no longer any room for doubt upon the subject.*. Doubts, however, it seems, do exist, and it is meet and proper that that question should be put at rest by an express adjudication of this court. Vattel (Book 1, ch. § 100) says: 'The utility of highways, bridges, canals, and, in a word, of all safe and commodious ways of communication, cannot be doubted. They facilitate the trade between one place and another, and render the conveyance of merchandise less expensive, as well as more certain and easy. The merchants are enabled to sell at a better price and obtain preference; an attraction is held out to foreigners, whose merchandise is carried through the country, and who diffuse wealth in all places through which they pass. (§ 101.) One of the principal things which ought to employ the attention of the Government, with respect to the

taking tolls for the use of the same. *The public have an interest in the use of the railroad, and the owners may be prosecuted for damages sustained* if they should refuse to transport an individual or his property, without any reasonable excuse, upon being paid the usual rate of fare. The legislature may also from time to time regulate the amount of tolls which it shall be lawful to take, in the same manner as they may regulate the amount of tolls to be taken at a ferry, or for grinding at a mill, unless they have deprived themselves of that power by a legislative contract with the owners of the road."

In Blodgett *vs.* The Mohawk & Hudson Railroad Company, (18 Wend., 1,) this question came before the court of appeals, and the principle of Beekman *vs.* The Saratoga and Schenectady Railroad Company was affirmed by the decisive vote of 19 to 4.

Senator Mason, delivering the opinion of the court, says:

"I might perhaps be permitted to observe that little remains to be said after the very able and elaborate argument of the counsel in the case of Beekman *vs.* The Saratoga and Schenectady Railroad, (3 Paige, 45,) and the no less able and satisfactory opinion of the present chancellor, delivered on that occasion. *Indeed, after the decision in that case, I had supposed there was no longer any room for doubt upon the subject.*. Doubts, however, it seems, do exist, and it is meet and proper that that question should be put at rest by an express adjudication of this court. Vattel (Book 1, ch. § 100) says: 'The utility of highways, bridges, canals, and, in a word, of all safe and commodious ways of communication, cannot be doubted. They facilitate the trade between one place and another, and render the conveyance of merchandise less expensive, as well as more certain and easy. The merchants are enabled to sell at a better price and obtain preference; an attraction is held out to foreigners, whose merchandise is carried through the country, and who diffuse wealth in all places through which they pass. (§ 101.) One of the principal things which ought to employ the attention of the Government, with respect to the

welfare of the public in general, and of trade in particular, must thus relate to the highways, canals, &c., in which nothing ought to be neglected to render them safe and commodious. (§ 103.) The construction and preservation of all these works being attended with great expense, the nation may very justly oblige all those to contribute to them who receive advantages from their use. This is the legitimite origin of the right of toll."

"*These propositions have the ready assent of every enlightened individual in every country, and under every kind of government.* In the days of Vattel, there were no railroads, and in all probability the obligation of governments to construct railroads in no manner entered into his consideration when inditing those general propositions; *they nevertheless come within the spirit of national obligations in the most emphatic manner*, as the government are thereby most effectually enabled to fulfil the just expectations and serve the most substantial *interests of community.* That the Government have not only the power, but that it is emphatically their duty and interest to construct railroads where the public interest and convenience demand them, cannot admit of a doubt; for such purposes they are authorized to take private property, upon rendering just compensation; and they are in like manner justified in exacting tolls from those who travel on them, as a means to reimburse the State for their construction and reparation. I apprehend no one will be disposed to doubt or question the truth of these propositions. This State, as well as many, it not all of the States of the Union, have, since the foundation of the Government, exercised this rightful power in the construction of canals, some in the construction of railroads, and all in authorizing the construction of *turnpike roads* and bridges, and the establishment of ferries. Bridges and ferries are *publici juris, and turnpike grants are made as the hypothesis that lands taken for the road are taken for public purposes.* (7 Pickering, 496; 2 N. Hamp. R., 25; 20 Johns. R., 442, 443.")

"If, however, the State shall not deem it wise or expedient at its own expense to construct a railroad, can there be any doubt as to its power to impart this authority to others? *I know of no instance in which the State has at its own*

welfare of the public in general, and of trade in particular, must thus relate to the highways, canals, &c., in which nothing ought to be neglected to render them safe and commodious. (§ 103.) The construction and preservation of all these works being attended with great expense, the nation may very justly oblige all those to contribute to them who receive advantages from their use. This is the legitimite origin of the right of toll."

"*These propositions have the ready assent of every enlightened individual in every country, and under every kind of government.* In the days of Vattel, there were no railroads, and in all probability the obligation of governments to construct railroads in no manner entered into his consideration when inditing those general propositions; *they nevertheless come within the spirit of national obligations in the most emphatic manner*, as the government are thereby most effectually enabled to fulfil the just expectations and serve the most substantial *interests of community.* That the Government have not only the power, but that it is emphatically their duty and interest to construct railroads where the public interest and convenience demand them, cannot admit of a doubt; for such purposes they are authorized to take private property, upon rendering just compensation; and they are in like manner justified in exacting tolls from those who travel on them, as a means to reimburse the State for their construction and reparation. I apprehend no one will be disposed to doubt or question the truth of these propositions. This State, as well as many, it not all of the States of the Union, have, since the foundation of the Government, exercised this rightful power in the construction of canals, some in the construction of railroads, and all in authorizing the construction of *turnpike roads* and bridges, and the establishment of ferries. Bridges and ferries are *publici juris, and turnpike grants are made as the hypothesis that lands taken for the road are taken for public purposes.* (7 Pickering, 496; 2 N. Hamp. R., 25; 20 Johns. R., 442, 443.")

"If, however, the State shall not deem it wise or expedient at its own expense to construct a railroad, can there be any doubt as to its power to impart this authority to others? *I know of no instance in which the State has at its own*

expense constructed a turnpike road, and yet our statute-books are filled with turnpike grants; and who has ever called them in question? Indeed, upon the argument here, as on all other occasions, it has ever been conceded that the legislature have an undoubted constitutional right *to charter a turnpike company, and to authorize the company to take private property* on which to construct their road, upon rendering just compensation. Such concession having been always made by the most eminent counsel, and having been acquiesced in since the organization of our Government, present such an exposition of the Constitution, and so ratify the exercise of this legislative power under it, that the courts will not shake or control it. (Stuart *vs.* Land, 1 Cranch, 299.) *Railroads are constructed for the same purpose and with the same objects as turnpike roads*, to facilitate travel and transportation of property and the receiving of tolls for such travel and transportation. The grant of an exclusive right to toll, as well on railroads as on turnpikes, is the consideration by which railroads are invited to expend money in the construction and to assume the hazard of their being profitable enterprises. (Amboy Turnpike Company, 5 Johns., ch. 112.) *Whether the tolls be received by the State or by the corporation cannot affect the character of the roads for public usefulness* any more than the receipt of toll at bridges and ferries fixes the character of those works. *Railroads are not only of great public use in the ordinary* business transactions of the citizen, but they may be more advantageously used than turnpike roads for national purposes; for the transportation of troops and munitions of war, at times when rapidity of transportation may be of vital importance to the safety of the republic; for the transportation of mails and the rapid dissemination of intelligence, which is the life of liberty, and, more than any other mode of conveyance, they tend to annihilate distance, bringing in effect places far distant near to each other; tending in their magic influence to the extension of personal acquaintance, the enlargement of business relations, and connecting more firmly the bond of fellowship and union between the inhabitants of the States. Next to the moral lever power of the press should be ranked the beneficial influence of railroads in their

effects upon the vast and increasing business relations of the nation, and the promoting, sustaining, and perpetuating the happiness, prosperity, and liberty of the people.

"It is insisted that laws authorizing the construction of railroads are not constitutional, because the citizen cannot travel upon them with his own carriage, when and as he pleases. Admit the fact to be so, are railroad laws to be deemed unconstitutional for this cause? Laws authorizing the construction of canals and turnpikes are conceded to be constitutional; yet can no citizen travel on either of these with such vehicles as he pleases. He cannot use the canal with a boat of a size or structure different from what has been or may be prescribed by the canal commissioners. He cannot be permitted to use it with a steamboat, destroying the embankments by the commotion of the waters which its wheels would create. He cannot travel on a turnpike with a vehicle which would occupy the whole road, thereby preventing other citizens from passing thereon. The convenience of travel, the safety of the citizens, and the accomplishment of all the ends designed by all public improvements, require adaptation to each particular mode of travel of such vehicles of conveyance as are fit and suitable for the purpose. An individual cannot travel the canal with a four-wheel carriage, nor on the railroad with a canal-boat. Not only are the vehicles to be adapted to each particular mode of travel but their uses, and necessarily must be subject to such salutary regulations as the public interest shall require to secure to every citizen an equal, convenient and safe participation and enjoyment of the improvement. In the nature of things it cannot be permitted that every citizen shall have a right to place upon a railroad his own car and locomotive. The objects designed to be attained in the use of railroads is the expedition and safety of conveyance; and in these the whole community have an interest, what must ever be considered paramount, and to which individual interest must yield. (4 T. R., 796.) It is obvious to the observation of all men that if every individual should be at liberty to travel a railroad in his own car, there necessarily and unavoidably would be a great destruction of property and life, and the great ends which these improvements were designed to accomplish would be totally

frustrated and destroyed. But because individuals may not in their own way use them, they are not the less public improvements; they are not the less of great public use, and do not less subserve the great interest of the community at large. The laws authorizing their construction are, in my judgment, constitutional, provided a just compensation be made or most certainly secured to the individuals whose land shall be taken for their construction and use; and inasmuch as the act incorporating the defendants authorizes the company to take plaintiff's land upon making him just compensation therefor, that act therefore is constitutional. It was well remarked by Chief Justice Marshall, in Fletcher *vs.* Peck, (6 Cranch, 128,) 'that whether a question, whether a law, be void for its repugnance to the Constitution, is at all times a question of much delicacy, which ought seldom to be decided in the affirmative in a doubtful case. The court, where impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." (See also Cooper *vs.* Telfair, 4 Cranch, 18 and 19; Bank of Newbern *vs.* Taylor, 2 Murphy, N. C. R., 266.)

In R. R. *vs.* Chapell, (1 Rice, S. C.,) disposing of the objection that land taken for a railroad was taken for a *private* use, and therefore was unconstitutional, the court say:

"The true substantial difficulty felt by the court is in coming to the conclusion that a railroad is *to be put on the footing and character of a highway*, and is erected not for private, *but for such general purposes*. But according to the view taken in the circuit decision, that the application of the eminent domain of Government is, from its essential nature, very various, *and to be made according to the successive exigencies of the State*, it may be rationally assumed

that railroads, although of recent origin, have already become of incalculable public importance; that the enlarged ends and objects of this great railroad especially is for the transportation and intercourse, commercial and social, of several different States, where interests are to be ever regarded and the mutual confidence that belongs to such a work sacredly fulfilled. This characteristic is irreconcilable with the proper conception of a mere private way. Again, railroads have been recognized as highways in other States, with whose adjudications upon great subjects of commerce and reciprocal advantage a liberal comity ought to be observed throughout the States; and the same great objects steadily kept in view, by all who value railroads, a new moral cement of the American Union, as well as the useful vehicles of our vast and increasing internal commerce; and thus uniting in their natural operation pecuniary profit and with moral fitness, and the prolific establishment of so many independant States."

"*May not our railroads, then, be fairly considered in character and objects as international, and therefore public highways.*" Again the court say: "But take another point of view which I cannot help thinking of lasting importance. Such a railroad as ours *should be held as a highway* on account of its great objects, AND FOR THE SAME REASONS TO BE KEPT UNDER PUBLIC CONTROL. Is it not wise to hold such a company, as the guardians or lessees of a great highway, endorsed with a public franchise, YET SUBJECT TO THE CONTROL WHICH THEIR PURPOSES INDICATE AS necessary and proper for such an establishment, and which the general right to use the road absolutely required?"

"Such a road must be held as a part of the public domain, farmed out to individual men for its practical administration and order alone. AND IF PLACED ALOOF FROM SUCH CONTROL, IT WOULD INEVITABLY BECOME SUSPECTED OF PARTIALITY, AND ODIOUS TO THE PEOPLE."

In Worcester *vs.* R. R., (Met., 566,) the court, by Shaw, C. J., after citing the charter of the company, says:

"From this view of the various provisions of the law, by which the rights and duties of the Western Railroad Com-

pany are regulated, it is manifest that the establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, *the use of which is secured to the whole community*, and constitutes *therefore*, like a canal, turnpike, or highway, a public easement. The only principle on which the legislature could have authorized the taking of private property for its construction, without the owner's consent, is, that *it was for the public use.* Such has been held to be the character of a turnpike corporation, *although* there the capital is advanced by the shareholders, and *the income goes to their benefit.* (Com. *vs.* Wilkinson, 16 Pick., 175.) It is true that the real and personal property necessary to the establishment and management of the railroad is vested in the corporation, *but it is in trust for the public.*

"The company have not the general power of disposal incident to the absolute right of property; they are obliged to use it in a particular manner, and for the accomplishment of a well-defined public object, &c.

"Treating the railroad, then, as a public easement, the works erected by the corporation as public works intended for public use, we consider it well established that, to some extent at least, the works necessarily incident to such public easement are public works, and as such exempted from taxation. Such we believe has been the uniform practice in regard to bridges, turnpikes, and highways, and their incidents, and also in regard to other public buildings and structures of a like kind, as State-houses, forts, and arsenals, court-houses, jails, churches, town-houses, school-houses, and generally to houses appropriated specially to public use."

Cases might be multiplied to an almost unlimited extent upon this subject. But those quoted from establish the true principle, and the cases exhibit no conflict upon this subject. No court in any State has ever pretended to sustain the exercise of the right of eminent domain in favor of a railroad except upon the ground that *the road was a work in which the public was interested.* Therefore every case holding that the right of eminent domain may be exer-

cised on behalf of a railroad company is an express declaration that a railroad is a work in which the public are interested. And such decisions exist in every State of the Union.

V.

Having shown that the building of a railroad is a *public* and not a private enterprise, because no honest court could sustain an exercise of the right of eminent domain in favor of a railroad company upon any other ground, we come to consider the question: Can the legislature authorize a county to build a railroad, or contribute towards the building of one, by direct payment or donation of money?

There are a few general principles always to be borne in mind in discussing a question of constitutional power.

The powers of the general Government must be sought in express words of grant, or reasonably implied from what is expressly granted.

The States, on the contrary, have all the powers of sovereignty not denied to them by their respective constitutions:

"The people, in framing the constitution," (says Denio, C. J., in People *vs.* Draper, 15 N. Y., 543,) "committed to the legislature the whole law-making power of the State which they did not expressly or impliedly withhold. Plenary power in the legislature for all purposes of civil government is the rule. A prohibition to exercise a particular power is the exception. In inquiring, therefore, whether a given statute is constitutional, it is for those who question its validity *to show that it is forbidden.*"

In Thorpe *vs.* R.R. Co., (21 Vt., 142,) Redfield, C. J., says:

"It has never been questioned, so far as I know, that the American Legislature have the same unlimited power in re-

gard to legislation which resides in the British Parliament, except where they are restrained by written constitutions."

In Gilford *vs.* Chenango Co., (13 N. Y., 145,) Dean, J., says:

"But our State government is an independent existence, representing the sovereignty of the people. The power of the legislature is the power of that sovereignty, *and is supreme in all respects*, and unlimited in all matters pertaining to legitimate legislation, except in those instances where the people have in their fundamental law limited or restricted it. *Taxation is indisputably a legislative power. The constitution of this State will be searched in vain for any clause which contains any restriction or limitation on the taxing power of the legislature.* Provisions there are regulating the manner in which bills appropriating the public moneys for local or private purposes, or bills imposing taxes shall be passed. * * * These, it will be seen, are not limitations of the absolute power of the legislature over the public moneys, or of their like power in the imposition of taxes, *but rules prescribing the manner of its exercise;* whenever these formalities are observed the legislature has the right to appropriate the public moneys for local or private purposes, and to impose a tax upon the property of the whole State, *or any portion of the State*, or on any particular and specific kind of property. Denio says: 'The legislature cannot take or authorize the taking of the property of an individual for *public* purposes without compensation, or for *private* purposes, though compensation is provided. It can, however, determine what sums shall be raised by taxation, and the purposes to which the money shall be applied. If the purposes are private or local, something more than an absolute majority of the members of the legislature must concur. * * * Independently of the express constitutional restriction, it can make appropriations of money whenever the public well-being requires or will be promoted by it; *and it is* THE *judge of what is for the public good.*'"

In this case a tax for the benefit of an individual to pay

a claim against a town, which could not be recovered at law, and which the town had once refused by vote to pay, was held valid and constitutional.

See, also, Leggett *vs.* Hunter, 19 N. Y., 445.
Cochran *vs.* Van Surlg, 20 Wend., 365.
People *vs.* Merrill, 21 Wend., 563.
Sears *vs.* Cottrill, 5 Mich., 251.
Mason *vs.* Wait, 4 Scam., 134.
Taylor *vs.* Porter, 4 Hill, 141.

Take the constitution of Wisconsin and see what restrictions are placed upon the power of taxation:

(1.) "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." (Sec. 1, Art. 8.)

(2.) "On the passage in either house of the legislature of any law which imposes, continues, or renews a tax, or creates a debt or charge, or makes, continues, or renews an appropriation of public or trust money, * * the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house shall in all such cases be required to constitute a quorum therein."

These provisions regulate *the exercise* of the power of taxation, but do not limit it; and in our constitution *there is no limitation upon this power.* (Blanding *vs.* Barr, 13 Cal., 343.)

I am aware that some courts assume the right to say that there are certain general principles which enter into constitutions and lie at the base of all civil government, which, if not observed, render all legislation subject to this objection void. But who is to judge of this? Have the courts a monopoly of constitutional wisdom? Have they a right to declare an act of the legislature void which violates no provision of the constitution, upon some undefined and indefinite theory of natural justice?

In People *vs.* Brooklyn, (4 N. Y., 428,) the court, speaking of the opinion of the court below, says:

"It was said that a tax to be valid must be apportioned 'upon principles of just equality,' and upon all the property in the same political district; and that it is a fundamental principle of free government, which, though not contained in the Constitution, limits and controls the legislature. *This is new, and it seems to be dangerous doctrine.* It clothes the judicial tribunals with the power of trying the validity of a tax by a test neither described nor defined by the Constitution. If by this test we may condemn an assessment apportioned according to the relation between burthen and benefit, we may with far better reason condemn a capitation tax, on the ground that numerical equality is not just equality; or a general property tax, for a local object, because it compels one portion of the community to pay more than their just share for the benefit of a portion. All discriminations in the taxation of property and all exemptions from taxation on grounds of public policy would fall by the application of this test. If this doctrine prevails, it places the power of the courts above that of the legislature in a matter affecting not only the vital interests, but the very existence of the Government. It assumes that the apportionment of taxation is to be regulated by judicial, and not by legislative discretion. *It obstructs the exercise of powers that belong to and are inherent in the legislative department, and restrains the action of that branch of the Government in cases in which the Constitution has left it free to act.*"

It has been said that every tax, to be valid, must be for some object in which the public interest is in some way or to some extent concerned. This is conceded, speaking of the rule which should guide the legislature. But it is not conceded that the courts can, upon this ground, annul an act of the legislature imposing a tax; for this would be to draw from the legislature to this court the jurisdiction of determining *what is for the public good.* Within the general

In People *vs.* Brooklyn, (4 N. Y., 428,) the court, speaking of the opinion of the court below, says:

"It was said that a tax to be valid must be apportioned 'upon principles of just equality,' and upon all the property in the same political district; and that it is a fundamental principle of free government, which, though not contained in the Constitution, limits and controls the legislature. *This is new, and it seems to be dangerous doctrine.* It clothes the judicial tribunals with the power of trying the validity of a tax by a test neither described nor defined by the Constitution. If by this test we may condemn an assessment apportioned according to the relation between burthen and benefit, we may with far better reason condemn a capitation tax, on the ground that numerical equality is not just equality; or a general property tax, for a local object, because it compels one portion of the community to pay more than their just share for the benefit of a portion. All discriminations in the taxation of property and all exemptions from taxation on grounds of public policy would fall by the application of this test. If this doctrine prevails, it places the power of the courts above that of the legislature in a matter affecting not only the vital interests, but the very existence of the Government. It assumes that the apportionment of taxation is to be regulated by judicial, and not by legislative discretion. *It obstructs the exercise of powers that belong to and are inherent in the legislative department, and restrains the action of that branch of the Government in cases in which the Constitution has left it free to act.*"

It has been said that every tax, to be valid, must be for some object in which the public interest is in some way or to some extent concerned. This is conceded, speaking of the rule which should guide the legislature. But it is not conceded that the courts can, upon this ground, annul an act of the legislature imposing a tax; for this would be to draw from the legislature to this court the jurisdiction of determining *what is for the public good.* Within the general

scope of legislative power, no matter what outrages may be committed, the courts are powerless in the premises, *unless some particular provision of the Constitution be violated.* The court is not the guardian of the people nor the sole exponent of natural equity and righteousness, nor has it any supremacy over the legislature to review its opinions and reverse its determinations upon matters within the jurisdiction of the legislature. If the legislature pass an act which conflicts with another act, the court, in determining private rights affected by the law, must say which act is in force. If a statute conflicts with the Constitution, the court must obey the Constitution and disregard the statute.

But unless a statute conflicts with the Constitution the court has no right to disregard it. Within the lines of constitutional restraint, much must be left to the discretion of some body; and the people choose to repose that trust in their political representatives, directly and annually responsible to them, not to the courts, whose judges are more independent of the people.

Cooley on Const. Limitations, 168, cases cited note *a*.
People *vs.* Mahoney, 13 Mich., 400.
Wynehamer *vs.* People, 13 N. Y., 429, Selden, J.
People *vs.* Draper, 15 N. Y., 532.

Upon this subject the opinion of C. J. Black, in Sharpless *vs.* The Mayor of Philadelphia, (21 Penn., 81, 147,) should be read carefully and reverently.

But it is wholly unnecessary for us to stand on this "outer wall" of constitutional doctrine. We may retire within universally conceded lines, and for the purpose of this argument I will admit that a tax for an object in which the public have *no possible* interest is unconstitutional, *and that the courts can declare it void for that reason.*

Let us see what is meant by the *public interest.*

Cooley on Const. Limitations, page 488, says:

scope of legislative power, no matter what outrages may be committed, the courts are powerless in the premises, *unless some particular provision of the Constitution be violated.* The court is not the guardian of the people nor the sole exponent of natural equity and righteousness, nor has it any supremacy over the legislature to review its opinions and reverse its determinations upon matters within the jurisdiction of the legislature. If the legislature pass an act which conflicts with another act, the court, in determining private rights affected by the law, must say which act is in force. If a statute conflicts with the Constitution, the court must obey the Constitution and disregard the statute.

But unless a statute conflicts with the Constitution the court has no right to disregard it. Within the lines of constitutional restraint, much must be left to the discretion of some body; and the people choose to repose that trust in their political representatives, directly and annually responsible to them, not to the courts, whose judges are more independent of the people.

Cooley on Const. Limitations, 168, cases cited note *a*.
People *vs.* Mahoney, 13 Mich., 400.
Wynehamer *vs.* People, 13 N. Y., 429, Selden, J.
People *vs.* Draper, 15 N. Y., 532.

Upon this subject the opinion of C. J. Black, in Sharpless *vs.* The Mayor of Philadelphia, (21 Penn., 81, 147,) should be read carefully and reverently.

But it is wholly unnecessary for us to stand on this "outer wall" of constitutional doctrine. We may retire within universally conceded lines, and for the purpose of this argument I will admit that a tax for an object in which the public have *no possible* interest is unconstitutional, *and that the courts can declare it void for that reason.*

Let us see what is meant by the *public interest.*

Cooley on Const. Limitations, page 488, says:

"It must always be conceded that the proper authority to determine what should not properly constitute a public harbor is the legislative department of the State. This is not only true for the State at large, but is true also in respect to each municipality or political division of the State, these inferior corporate existences having only such authority in this regard as the legislature shall confer upon them. And in determining this question, the legislature cannot be held to any narrow or technical rule. Certain expenditures are not only absolutely necessary to the continued existence of the government, but as a matter of policy it may sometimes be proper and wise to assume other burdens which rest entirely on considerations of honor, gratitude, or charity. The officers of government must be paid, the laws printed, *roads constructed*, and public buildings erected; but with a view to the general well-being of society, it may also be important that the children of the State should be educated, the people kept from starvation, losses in the public service indemnified, and incentives held out to faithful and fearless discharge of duty in the future by the payment of pensions to those who have been faithful public servants in the past. There will, therefore, be necessary expenditures which rest upon considerations of policy alone; *and in regard to the one as much as the other, the decision of that department to which alone questions of State policy are addressed must be accepted as conclusive.*"

But by no court has the nature of *taxation* been more clearly and accurately defined, and the power of the court to arrest it more plainly stated, than by the supreme court of Wisconsin in Brodhead *vs.* Milwaukee, (19 Wis., 652.)

The court, by Dixon, C. J., says:

"The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a *mere* private purpose. It cannot in the form of a tax take the money of a citizen and give it to an individual, *the public interest or welfare being in no way connected with the transaction.* The objects for which the money is raised by taxation must be public, and such as sub-

"It must always be conceded that the proper authority to determine what should not properly constitute a public harbor is the legislative department of the State. This is not only true for the State at large, but is true also in respect to each municipality or political division of the State, these inferior corporate existences having only such authority in this regard as the legislature shall confer upon them. And in determining this question, the legislature cannot be held to any narrow or technical rule. Certain expenditures are not only absolutely necessary to the continued existence of the government, but as a matter of policy it may sometimes be proper and wise to assume other burdens which rest entirely on considerations of honor, gratitude, or charity. The officers of government must be paid, the laws printed, *roads constructed*, and public buildings erected; but with a view to the general well-being of society, it may also be important that the children of the State should be educated, the people kept from starvation, losses in the public service indemnified, and incentives held out to faithful and fearless discharge of duty in the future by the payment of pensions to those who have been faithful public servants in the past. There will, therefore, be necessary expenditures which rest upon considerations of policy alone; *and in regard to the one as much as the other, the decision of that department to which alone questions of State policy are addressed must be accepted as conclusive.*"

But by no court has the nature of *taxation* been more clearly and accurately defined, and the power of the court to arrest it more plainly stated, than by the supreme court of Wisconsin in Brodhead *vs.* Milwaukee, (19 Wis., 652.)

The court, by Dixon, C. J., says:

"The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a *mere* private purpose. It cannot in the form of a tax take the money of a citizen and give it to an individual, *the public interest or welfare being in no way connected with the transaction.* The objects for which the money is raised by taxation must be public, and such as sub-

serve the common interest and well-being of the community required to contribute. To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable. So CLEAR AND PALPABLE AS TO BE PERCEPTIBLE BY EVERY MIND AT THE FIRST BLUSH."

In Thomas *vs.* Leland, (24 Wend., 65,) the court held that an act of the legislature imposing a tax upon a local district of the State, in reference to the building of a canal, was constitutional.

The court, page 68, says: "But, secondly, it is said that if the act had in view the construction of the canal, then it was unconstitutional, as seeking to take private property for public use without just compensation or any compensation. To sustain this argument, it must be denied that the general profit of the community to which we belong will warrant a tax affecting our property. One answer in the case at bar is, that *the improvement in question was in itself a compensation to the plaintiff*. Such, at any rate, was the theory of the proceeding, and we must intend that it was carried out in practice. Such was the view taken by the legislature; *and they must be left to judge of the compensation*.

"But the argument proves too much. It would go to cut off entirely many acknowledged powers of taxation, such as that which raises money to relieve the poor, or establish and keep on foot common schools, *to build bridges*, or *work the highway*. It confounds two distinct legislative powers,—a simple power of taxation, with the power of taking private property for tax to build a lunatic asylum, may be mentioned as one instance. If the power to impose such a tax were to be rested on the ground of individual benefit to each one who should be called on to contribute, it is quite obvious that it would not be maintained for a moment. Yet who would doubt that such might be imposed on a local community, a county, or even a town? I admit that this

serve the common interest and well-being of the community required to contribute. To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable. So CLEAR AND PALPABLE AS TO BE PERCEPTIBLE BY EVERY MIND AT THE FIRST BLUSH."

In Thomas *vs.* Leland, (24 Wend., 65,) the court held that an act of the legislature imposing a tax upon a local district of the State, in reference to the building of a canal, was constitutional.

The court, page 68, says: "But, secondly, it is said that if the act had in view the construction of the canal, then it was unconstitutional, as seeking to take private property for public use without just compensation or any compensation. To sustain this argument, it must be denied that the general profit of the community to which we belong will warrant a tax affecting our property. One answer in the case at bar is, that *the improvement in question was in itself a compensation to the plaintiff*. Such, at any rate, was the theory of the proceeding, and we must intend that it was carried out in practice. Such was the view taken by the legislature; *and they must be left to judge of the compensation*.

"But the argument proves too much. It would go to cut off entirely many acknowledged powers of taxation, such as that which raises money to relieve the poor, or establish and keep on foot common schools, *to build bridges*, or *work the highway*. It confounds two distinct legislative powers,—a simple power of taxation, with the power of taking private property for tax to build a lunatic asylum, may be mentioned as one instance. If the power to impose such a tax were to be rested on the ground of individual benefit to each one who should be called on to contribute, it is quite obvious that it would not be maintained for a moment. Yet who would doubt that such might be imposed on a local community, a county, or even a town? I admit that this

power of taxation may be abused, but its exercise cannot be judicially restrained so long as it is referable to the taxing power. The only check lies at present in that power being usually exerted on considerable bodies of men, who possess a control in a greater or less degree over its agents."

In this connection see—before cited—Seons *vs.* Racine, (10 Wis., 271.)

In Hasbrook *vs.* Milwaukee, (13 Wis., 43,) this court, by Dixon, C. J., says:

"The power of municipal corporations, when authorized by the legislature to engage in works of internal improvement, *such as the building of railroads*, canals, harbors, and the like, or to loan their credit in aid thereof, and to defray the expenses of such improvements, *make good their pledges* by an exercise of the power of taxing the persons and property of their citizens, *has always been sustained* on the ground that such works, *although they are in general operated and controlled by private corporations, are, nevertheless, by reason of the facilities which they afford for trade, commerce, and intercommunication between different and distant portions of the country indispensable to the public interests and public functions.* It was originally supposed that they would add, *and subsequent experience demonstrated that they have added, vastly and almost immeasurably, to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of cities, towns, villages, and rural districts through which they pass, and with which they are connected.* It is in view of these results, the public good thus produced, and the benefits thus conferred upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them matters of public concern, for the accomplishment of which *the taxing power might lawfully be called into action.* It is in this sense that they are said to fall so far within the purposes for which municipal corporations are created, and that such corporations may engage in, or pledge their credit for, their construction.

"In Booth *vs.* the Town of Woodbury, (32 Conn., 128,)

power of taxation may be abused, but its exercise cannot be judicially restrained so long as it is referable to the taxing power. The only check lies at present in that power being usually exerted on considerable bodies of men, who possess a control in a greater or less degree over its agents."

In this connection see—before cited—Seons *vs.* Racine, (10 Wis., 271.)

In Hasbrook *vs.* Milwaukee, (13 Wis., 43,) this court, by Dixon, C. J., says:

"The power of municipal corporations, when authorized by the legislature to engage in works of internal improvement, *such as the building of railroads*, canals, harbors, and the like, or to loan their credit in aid thereof, and to defray the expenses of such improvements, *make good their pledges* by an exercise of the power of taxing the persons and property of their citizens, *has always been sustained* on the ground that such works, *although they are in general operated and controlled by private corporations, are, nevertheless, by reason of the facilities which they afford for trade, commerce, and intercommunication between different and distant portions of the country indispensable to the public interests and public functions.* It was originally supposed that they would add, *and subsequent experience demonstrated that they have added, vastly and almost immeasurably, to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of cities, towns, villages, and rural districts through which they pass, and with which they are connected.* It is in view of these results, the public good thus produced, and the benefits thus conferred upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them matters of public concern, for the accomplishment of which *the taxing power might lawfully be called into action.* It is in this sense that they are said to fall so far within the purposes for which municipal corporations are created, and that such corporations may engage in, or pledge their credit for, their construction.

"In Booth *vs.* the Town of Woodbury, (32 Conn., 128,)

the court sustained a new law taxing a town to pay gratuities to men drafted into the United States service during the late civil war. The court say: 'In the first place, if it be conceded that it is not competent for the legislative power to make a gift of the common property—of a sum of money to be raised by taxation, where no possible public benefit, direct or indirect, can be derived therefrom—*such exercise of the legislative power must be of an extraordinary character to justify the interference of the judiciary*, and this is not that case.

"'Second, if there be *the least possibility* that making the gift will be promotive in *any degree* of the public welfare, it becomes a question of *policy* and not of *natural justice*, and *the determination of legislature is conclusive.* And such is this case. Such gifts to unfortunate classes of society as the indigent blind, the deaf and dumb, or insane, or grants to particular colleges or schools, or grants of pensions, swords, or other mementoes for past services, involving the general good indirectly and in slight degree, are frequently made and never questioned.'"

The doctrine of this case:

"That if there be the least possibility that making the gift will be promotive in *any degree* of the public welfare, it becomes a question of policy, and not of natural justice, and the determination of the legislature is conclusive."

And the declaration of the supreme court of Wisconsin, in Brodhead *vs.* Milwaukee, that—

"To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purpose for which the funds are raised must be clear and palpable. So clear and palpable as to be perceptible by every mind at the first blush"—

we submit, states correctly the principle of constitutional law in relation to taxation. If *the slightest benefit* will result to the public from the gift, if the public have *any pos-*

the court sustained a new law taxing a town to pay gratuities to men drafted into the United States service during the late civil war. The court say: 'In the first place, if it be conceded that it is not competent for the legislative power to make a gift of the common property—of a sum of money to be raised by taxation, where no possible public benefit, direct or indirect, can be derived therefrom—*such exercise of the legislative power must be of an extraordinary character to justify the interference of the judiciary*, and this is not that case.

"'Second, if there be *the least possibility* that making the gift will be promotive in *any degree* of the public welfare, it becomes a question of *policy* and not of *natural justice*, and *the determination of legislature is conclusive.* And such is this case. Such gifts to unfortunate classes of society as the indigent blind, the deaf and dumb, or insane, or grants to particular colleges or schools, or grants of pensions, swords, or other mementoes for past services, involving the general good indirectly and in slight degree, are frequently made and never questioned.'"

The doctrine of this case:

"That if there be the least possibility that making the gift will be promotive in *any degree* of the public welfare, it becomes a question of policy, and not of natural justice, and the determination of the legislature is conclusive."

And the declaration of the supreme court of Wisconsin, in Brodhead *vs.* Milwaukee, that—

"To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purpose for which the funds are raised must be clear and palpable. So clear and palpable as to be perceptible by every mind at the first blush"—

we submit, states correctly the principle of constitutional law in relation to taxation. If *the slightest benefit* will result to the public from the gift, if the public have *any pos-*

sible interest in the object to be promoted, then taxation ordered by the legislature must be enforced by the courts. To sustain the doctrine of Whiting *vs.* Fond Du Lac county, therefore, it must be shown that a railroad, to be held and operated by a corporation in the usual way, is an object in which the public have *no possible* interest; one which cannot possibly result in any degree of benefit to the public. If so, it is certain that the right of eminent domain could never be exercised in favor of a railroad company. Hence, every case which holds that the right of eminent domain may be exercised in favor of a railroad company is a direct adjudication that taxation may be exercised to aid it, because the right of taxation and the right to exercise the right of eminent domain rest upon the same identical ground, viz: *that the public have an interest in the road.*

The array of adjudications in the Federal and State courts upon this subject, and the fact that for thirty years the principle has been acted upon in every State, and never denied by any court, high or low, until within the last five years, ought to settle the question in this court, which decides causes upon the law as it is, and does not attempt to usurp the jurisdiction of legislation to determine the rights of parties, by making laws or promulgating principles never heard of until after the rights of the parties have attached, and become vested and complete under contracts valid when made.

The following decisions in the State courts establish the principles here maintained:

ALABAMA.

(1854,) Stein *vs.* Mayor of Mobile, - - 24 Ala., 591
(1857,) Mayor of Wetumpka *vs.* Winter, - 29 Ala., 651
(*Plank-Road Case.*)
(1860,) Gibbons *vs.* Mobile, &c., R.R. Co., - 36 Ala., 410

CALIFORNIA.

(1859,) Pattison *vs.* Supervisors of Ulba Co., - 13 Cal., 175
(1850,) Hobart *vs.* Supervisors of Beetle Co., - 17 Cal., 23
(1863,) Robinson *vs.* Bidwell, - - - 22 Cal., 379
(1864,) French *vs.* Teschmaker, - - - 24 Cal., 518
People *vs.* Coon, - - - 25 Cal., 635
(1865,) People *vs.* Supervisors of San Francisco, - - - - - - 27 Cal., 655
Stockton and V. R.R., *vs.* Stockton -

CONNECTICUT.

(1843,) Bridgeport *vs.* Housatonic R.R. Co., - 15 Conn., 475
(1860,) Society for Savings *vs.* New London, - 29 Conn., 174

DELAWARE.

(1847,) Rice *vs.* Foster, - - - 4 Harrington, 479

FLORIDA.

(1852,) Cotton *vs.* County Commissioners of Leon, - - - - - - - 6 Fla., 610

GEORGIA.

(1857,) Winn *vs.* Macon, - - - - 21 Ga., 275
(1857,) Powers *vs.* Inferior Court of Dougherty Co., - - - - - - - 23 Ga., 65

ILLINOIS.

(1851,) Ryer *vs.* Alton, &c., R.R. Co., - - 13 Ill., 516
(1858,) Prettyman *vs.* Supervisors of Tazewell Co. - - - - - - - 19 Ill., 406
(1859,) Robertson *vs.* City of Rockford *et al.*, - 21 Ill., 451
(1860,) Johnson *vs.* Stark Co., - - - 24 Ill., 75
(1860,) Perkins *vs.* Lewis - - - - 24 Ill., 208
(1861,) Butler *vs.* Dunham, - - - - 27 Ill., 474
(1862,) Clarke *vs.* Supervisors, &c., - - 27 Ill., 305
(1862,) Piatt *vs.* People, - - - - 29 Ill., 54
King *vs.* Wilson, 3 Chicago *Legal News.*
(1872,) Chicago, &c., R.R. Co. *vs.* Smith—Decision just rendered in supreme court for northern division of Illinois. Not yet reported.

INDIANA.

(1857,) City of Aurora *vs.* West, - - 9 Ind., 74
(1860,) Evansville, &c., R.R. Co. *vs.* Evansville, 15 Ind., 395
(1862,) The Commissioners, &c., *vs.* Bright, 18 Ind., 93
(1864,) City of Aurora *vs.* West, - - 22 Ind., 88
L. M. and B. R.R. *vs.* Geiger, - 34 Ind., —

IOWA.

(1853,) Dubuque and Pacific R.R. Co. *vs.* Dubuque - - - - 4 G. Green, 1
(1854,) State *vs.* Bissell - - - 4 G. Green, 328
(1857,) Clapp *vs.* Cedar Co., - - 5 Clark, (Iowa,) 15
(1858,) Ring *vs.* Johnson Co., - - - 6 Iowa, 265
" McMillan *vs.* Boyles, - - - 6 Iowa, 304
" McMillan *vs.* Lee Co., - - - 6 Iowa, 391
(1859,) Whittaker *vs.* Johnson Co., - - 10 Iowa, 161
Stewart *vs.* Supervisors of Polk Co.—Late case reported in pamphlet.

KANSAS.

(1871,) County Commissioners *vs.* Miller.

KENTUCKY.

(1849,) Talbott *vs.* Dent, - - - 9 B. Monroe, 526
(1850,) Justices, &c., *vs.* Turnpike Co., 11 B. Monroe, 143
(1852,) Slack, *et al.*, *vs.* Maysville, &c., R.R. Co., - - - - - 13 B. Monroe, 1
(1859,) Maddox *vs.* Graham, - - - 2 Metc., 56

LOUISIANA.

(1853,) New Orleans, &c., Co. *vs.* McDonnough, - - - - - - 8 La. An., 341
(1856,) Parker *vs.* Scogin, - - - 11 La. An., 629
" Vicksburg, &c., R.R. Co. *vs.* Ouachita, - - - - - - 11 La. An., 649
(1854,) New Orleans *vs.* Graihle - - 9 La. An., 561

MAINE.

(1860,) Augusta Bank *vs.* Augusta, - - 49 Me., 507

MISSISSIPPI.

Strickland *vs.* Mississippi, &c., R.R. Co.—Cited as for 21 (or 27) Miss., 209, and as in 1859.

MISSOURI.

(1856,) City of St. Louis *vs.* Alexandria, - 23 Mo., 483
(1867,) St. Joseph R.R. *vs.* Buchanan Co. Ct., 39 Mo., 485

NEW YORK.

(1857,) Grant *vs.* Carter, - - - 24 Barb., 232
(1857,) Benson *vs.* Mayor of Albany, - 24 Barb., 248
(1857,) Clark *vs.* City of Rochester, - 24 Barb., 446
(1858,) Bank of Rome *vs.* Village of Rome, 18 N. Y., 38
(1859,) Gould *vs.* Town of Venice, - 29 Barb., 442
(1861,) Starin *vs.* Genoa, - - - 23 N. Y., 439
(1864,) Clark *vs.* City of Rochester, - 28 N. Y., 605
(1865,) People *vs.* Mitchell, - - 45 Barb., 208
(1866,) People *vs.* Mitchell, - - 35 N. Y., 551
(1870,) People *vs.* Hulbut, - - 59 Barb., 485

NORTH CAROLINA.

(1855,) Taylor *vs.* Newberne, - - 2 Jones Eq., 141
—*A Navigation Case.*
(1858,) Caldwell *vs.* The Justices, &c., 4 Jones Eq., 323

OHIO.

(1852,) Cincinnati, &c., R.R. Co. *vs.* Commissioners of Christian Co., - 1 Ohio St., 77
(1852,) R. W. *vs.* Township treasurer - 1 Ohio St., 105
(1853,) Cass *vs.* Dillon, - - - 2 Ohio St., 607
(1853,) Thomson *vs.* Kelley, - - 2 Ohio St., 647
(1857,) State *vs.* Van Horn, - - 7 Ohio St., 327
(1858,) State *vs.* Union Twp., - - 8 Ohio St., 394
(1861,) State, &c. *vs.* Commiss'rs Hancock Co., - - - - - - 12 Ohio St., 596
(1863,) Knox *vs.* Nichols, - - - 14 Ohio St., 260
(1863,) Fosdick *vs.* Perrysburg, - - 14 Ohio St., 472
(1863,) State *vs.* Goshen, - - - 14 Ohio St., 569
——— Griffith *vs.* Co. Commissioners, 20 Ohio Appendix, 1
——— Bloomington R.R. *vs.* Gaiger, April, 1871, Vol. 4 of Law Times State Reps., p. 98.

PENNSYLVANIA.

(846,) Harvey *vs.* Lord, - - - 3 Penn. St., 331

(1849,) Commonwealth *vs.* McWilliams, 11 Penn. St., 62
—*Turnpike Case.*
(1853,) Sharpless *vs.* Mayor of Philadelphia, - - - - - 21 Penn. St., 147
(1853,) Moers *vs.* The City of Reading, 21 Penn. St., 188
(1858,) Commonwealth *vs.* Co. Commissioners, - - - - - 32 Penn. St., 218
(1861,) Commonwealth *vs.* Pittsburgh, - 41 Penn. St., 278
(1862,) Commonwealth *vs.* Perkins *et al.*, 43 Penn. St., 400

SOUTH CAROLINA.

(1857,) State *vs.* Charleston, - - - 10 Rich., 491

TENNESSEE.

(1848,) Nichols *vs.* Nashville, - - 9 Humph., 252
(1854,) L. and N. R.R. Co. *vs.* Davidson Co., 1 Sneed, 637

TEXAS.

San Antonio *vs.* Jones. - - 28 Texas, 19

VERMONT.

Cadis *et al. vs.* Town of Swantom.—Late case; not reported.

VIRGINIA.

(1837,) Goddin *vs.* Crumps, - - - 8 Leigh, 120
(1864,) Harrison Justices *vs.* Holland, - - 3 Grattan, 247

WISCONSIN.

(1859,) Clarke *vs.* City of Janesville, - - 10 Wis., 136
(1860,) Bushnell *vs.* Beloit, - - - 10 Wis., 195
(1860,) Mills *vs.* Gleason, - - - - 11 Wis., 470

VI.

We come now to consider in detail the opinion of the court in Whiting *vs.* Fond du Lac. After the opinion of the court was pronounced, a motion for rehearing was made, according to the practice of that court, and in overruling the motion, the majority of the court, by Dixon, C. J., delivered a very able opinion, restating and sustaining

the views of the majority, and Mr. Justice Paine delivered a powerful dissenting opinion. The opinion of the majority, by Dixon, C. J., (25 Wis., 188,) is distinguished by great calmness and dignity, and evinces a careful and upright examination of the subject. This is the more noticeable for the reason that the decision first pronounced by the court had been made the subject of newspaper discussion, and furnished the *excuse*, if not justification, for some popular declamation, in which the speakers, it is to be feared, did not always observe the respect due to the deliberate judgment of the able and honest judges who had delivered it. The opinion last delivered has every element which should enter into a judicial judgment *except soundness*, and we shall endeavor to treat it with the respect to which it is entitled, not only as a careful judgment of the highest court of a State, but for the great ability which is displayed in enforcing the views it maintains. Let it be borne in mind that it is settled by the *State court of Wisconsin* that the legislature may authorize counties and towns to aid the building of railroads *by subscribing for the stock of the company*, paying their subscription in bonds, *and raising the money by taxation to pay the bonds.*

Clark *vs.* Janesville, 10 Wis., 136.
Bushnell *vs.* Beloit, 10 Wis., 195.

These decisions were made in 1859, more than ten years before these securities were paid, and have never been reversed. In those cases various provisions of the State constitution were relied upon to defeat this power. The provision that the State shall never be engaged in works of internal improvement was claimed to forbid the State to authorize its municipalities to engage in such works; and various other provisions were cited and relied upon. But the court overruled the argument and sustained the power. In Whiting *vs.* Fond du Lac, the court does not attempt to

private corporation; a thing wholly immaterial. If the public interests require the railroad, it is immaterial whether it be built by a public or a private corporation, or even by an individual; the tax is equally proper.

2. The court asks the following questions:

"Can a railroad be built and put in running order by direct taxation, and then the whole property transferred by act of the legislature, without compensation or equivalent, to one or more private individuals, or to a corporation composed of such individuals, created for the purpose of receiving it? Or can a corporation, composed of one or more individuals, be created for the purpose of owning and operating a railroad, and holding and enjoying all its gains and emoluments, and at the same time the charter provides that the corporators or stockholders shall pay nothing, but that the road shall be built, equipped, and put in running order at the expense of the people, to be defrayed by taxation?"

These questions the court answers as follows:

"The majority of this court are constrained to believe the legislature possesses no such powers, and that all these questions must be answered in the negative. Such proceedings, provided they were proper or could be sustained, would deserve the opprobrious epithet given to them by Judge James, in Sweet *vs.* Hurlburt, (51 Barb., 316,) where, speaking of an act of the legislature of New York, precisely like that involved in these appeals, he says: 'If this can be done, it is legal robbery; less respectable than highway robbery in this: that the perpetrator of the latter assumes the danger and infamy of the act, while this act has the shield of legislative responsibility.'"

Whenever a disputant falls into calling hard names and applying offensive epithets, he is usually getting the worst of the argument. And it may be questioned whether Judge James has not shown more warmth than wisdom upon this subject. Whether the building of a railroad by taxation,

and passing it over to a corporation, upon the condition that it should be operated and kept in repair, would be robbery or not, *might*, to a certain extent, depend upon whether such a proceeding would result in benefit or injury to the people to be taxed. If it could be demonstrated that a particular county would be largely benefited by building a railroad and passing the same over upon these conditions, then upon what grounds a law which should authorize the county in its discretion to do so could be denominated "robbery," may be apparent to Judge James, but it is not to us. And if it could be shown that Fond du Lac county would be benefited more than one hundred thousand dollars by the completion of this railroad, where is the injustice or robbery in authorizing the county to raise that sum and pay it over for that purpose? Whether such benefit will or will not result is a question proper for the legislature to determine, and it has been determined in this instance that such benefit would result. (See Peo. *vs.* Brooklyn, 4 Comstock, 431, and cases there cited.) Now, by what clause of the Constitution did that court get an appellate jurisdiction to reverse this decision of the legislature upon a question within its exclusive jurisdiction?

All the turnpike roads of the eastern States, when turnpikes held to the interests of commerce the same relation now held by railroads, were built by this joint effort of the public and of individuals. In almost every instance turnpike companies were authorized to take a highway which had been condemned by the public through right of eminent domain and built by taxation, and in some cases the public was taxed to aid in building the road for the company.

In Couch *vs.* The Ulster Turnpike Company, (4 John Ch., 26,) an injunction to restrain such an assessment was refused. The constitutional question was not discussed, because no one had the boldness or the sharpness to raise it. But an assessment for such a purpose was enforced.

In Turnpike Co. *vs.* Bishop, (11 Vt., 198,) it was held competent for the legislature to grant a highway to a turnpike company. Redfield, C. J., says:

"*There can be no doubt of the power of the legislature to make a valid grant to that effect.* The town or its inhabitants have no more interest in the highways within its limits than any other citizens. The public highways throughout the State are of general concern, and as such *must of necessity be perpetually under the control of the legislature*, unless granted to individuals or private corporations."

See, also, Turnpike Co. *vs.* Baker, 4 Humph., 415.

If the State owned a railroad which it had built by taxation, why might it not grant it to a corporation to operate it and keep it in repair for the tolls, as well as it could grant a common road?

3. The opinion of the court proceeds upon the theory that although the legislature may authorize a town or county to aid in the construction of a railroad by subscribing to a portion of its stock, and raising money by taxation to pay for the stock, yet the legislature may not authorize a town or county to raise and pay over a given sum in money to be applied towards building the road.

There is no principle for this distinction to rest upon. It must be borne in mind that we are not discussing a question of public policy or economy, but of constitutional power. A respectable argument was made in the cases cited above against the power of the legislature to authorize its municipalities to aid in such works; but the power being conceded, to say that it is constitutional to accomplish this end in one way and unconstitutional to do the same thing *in a different manner*, the constitution being entirely silent upon the subject, seems remarkable. The legislature, in adjusting the details of such a transaction, might well say that the county, in addition to the benefits

to result from the road, should also have a certain amount of stock. But the details of this transaction, so proper to be regulated by legislative discretion, and varied in different cases according to circumstances, is certainly not regulated by the constitution. Unless the public are to be benefited, the tax cannot be levied; if benefit will result, it is immaterial, so far as the constitution is concerned, what may be the form or extent of benefit.

In Brodhead *vs.* Milwaukee, (29 Wis.,) the court say that to justify the court in arresting the levy of a tax ordered by the legislature, *it must be so clear and palpable as to be perceptible to every mind at the first blush that the public have no possible* interest in the object for which the tax is levied; and in Hasbrook *vs.* Milwaukee, (17 Wis.,) the court explain what benefit results to the public by the building of railroads, as follows:

"It was originally supposed that they would add, *and subsequent experience has demonstrated* that they have added, *vastly and almost immeasurably* to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of the cities, towns, villages, and rural districts through which they pass and with which they are connected. It is in view of these results, the public good *thus produced*, and the benefits *thus conferred* upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them matters of public concern, *for the accomplishment of which the taxing power might lawfully be called into action.*"

The court say:

"Railroads have added vastly, and almost immeasurably, to the general business, the commercial prosperity, the pecuniary resources of the inhabitants of the cities, towns, villages, &c., through which they pass and with which they are connected."

How have they done this: by dividends on the stock held by the cities, towns, villages, &c.? *It is well known to everybody that not a dollar* was ever realized by any town or county in Wisconsin *as a dividend on stocks.* The immeasurable benefit has been that such works, although they are in general operated and controlled by private corporations, are nevertheless, "*by reason of the facilities which they afford for trade, commerce, and intercommunication between different and distant portions of the country, indispensable to the public interests and public functions.*"

The immeasurable benefits conferred by railroads upon a community, which the court say justifies an exercise of the power of taxation in their behalf, are not dividends upon stock, not direct benefits, but all indirect; facilities afforded for—

"Trade, commerce, and intercourse between different and distant portions of the country, *indispensable to the public interests and public functions.*"

Yet if the doctrine of Whiting's case be sound, the right of the legislature to authorize taxation in aid of a railroad rests not upon the substantial benefits to the people; it rests not upon a fact, but upon a falsehood. "Immeasurable" benefits to the public will not justify a tax; but immeasurable benefits, *taken in connection with a few shares of stock* not worth the paper by which they are evidenced, render *the tax* constitutional. If this be not ignoring substances and running mad after shadows, it would be difficult to say what would be.

No case can be found which holds the tax valid upon the ground of the stock, nor one which even mentions the stock as important, but every case rests the validity of the tax upon the ground that the tax is being raised for the purpose of aiding a great public improvement.

And the only cases which mention the taking of stock at all, besides the case of Sweet *vs.* Hurlbut, are the cases, City of Bridgeport *vs.* Housatonic R.R. Co., (15 Conn., 475;) the State of Iowa *ex rel. vs.* the County of Wapello, (13 Iowa, 88;) Gibbons *vs.* Mobile & Great Northern R.R. Co., (36 Alabama, 410.) And in these cases the stock is either considered as of no consequence in supporting the tax or deemed an *objection* to its validity.

In the case in 15 Conn. the objection was raised that the city had no power to subscribe for stock in the corporation. The court did not deny the general proposition, but replied to the objection as follows:

"It should be borne in mind that it was neither the declared nor the actual purpose of the city to *deal or speculate in the stock of the railroad company, but solely to aid in the construction of what was believed to be a great public improvement* which would result in the direct advantage to the city by directing the business of the interior from other channels and sending it to Bridgeport. A subscription to the stock was a means and the only practicable means of furnishing the intended aid and effecting the primary objects. *To subscribe for this purpose* to the stock of the railroad company was not an unusual transaction, but rather, according to the language of the day, a fair business operation. If, therefore, the city becomes directly a stockholder in a corporation, and citizens indirectly interested in a railroad, *this was only an incidental result of their efforts to give aid to the construction of the road for the interest of the city and its citizens.*"

In the case in the 13 Iowa, above referred to, the court deemed the taking of stock a fatal objection to the validity of the tax, and made a long and exhaustive argument upon the question, and we submit one which is *conclusive*, if the stock is to be taken, as the court in this case seems to think an important object in the transaction. (See pages 400 to 420.)

The case in 36 Alabama, cited by Justice Paine in the dissenting opinion, lays down what we contend is the law; and its doctrine is entirely in accordance with that laid down in 15 Conn., to wit: that it is no objection to the tax that no tax had been provided for.

The court in its opinion in this cause cite Sweet *vs.* Hurlburt, (15 Barb., 316.)

We desire to call attention to the difference between the facts in that case and this.

The act of the legislature which was condemned in that case differs from the statutes in aid of railroads which have been sustained by the courts in this: that it proposes to authorize the money to be *donated*, while in "all other acts stock *or some pretended equivalent* is contemplated as a consideration for the bonds to be issued." (Page 316.) And again, (p. 30,) the court points out what besides stock may be an equivalent, and says:

"Every statute authorizing the bonding of towns to aid in the construction of railroads, &c., which has as yet been upheld by the courts, contemplated some direct equivalent in stock *or otherwise before* issuing and delivering the bonds or their proceeds. In this act, no equivalent, real or imaginary, is contemplated; *none certainly secured.* The act directs the proceeds of the bonds to be *donated*, *not upon the completion of the work*, but upon the organization of a company or association. *It does not devote the money to the construction of the railroad* through public officers devoted to the duty, *but donates it to a company*, and then declares it shall be employed and used in the construction of a railroad. *The gift is positive;* the *use* is *directory. The company gets the money*, but neither the public, nor the taxpayers, nor the town get any *security that the road shall ever be completed.* The only security required is that the road shall be completed, and the money expended, without saying where." "The donation provided by this act is not for a public improvement; the tax is not authorized as such. To that end an appropriation should be directly to the ob-

ject, and the act should direct the amount to be levied, and when. This act makes no appropriation; *directs no work to be constructed;* but simply authorizes the town, on certain conditions, to issue the bonds, give away the proceeds, and then tax the citizens to pay the principal and interest."

Now let us examine the act in this case.

While the New York act proposes a *donation*, the act under consideration exacts two distinct equivalents: first, by sections 3 and 4, the building of the road or the doing of the work *is secured before* the company gets the aid. *No payments are made until the company has actually earned the money in work upon the improvement;* second, by section 6, the legislature provided a low maximum price for the transportation of wheat during a period of ten years. *What was the price* for carrying wheat is not in evidence before the court, and we shall not even suggest it. But your honors know judicially where and how Fond du Lac county is located, in reference to her lines of transportation, from the pleadings in this case and from her geographical position, of which you take judicial notice; from these sources of knowledge and from the terms of this section and from the general presumption of wisdom in the legislative department, you cannot doubt that this section *is* and was intended by the legislature *to be* a benefit secured to the people of Fond du Lac county, and a *direct and beneficial equivalent for the aid contemplated by the act.* We think that these two features distinguish this case from Sweet *vs.* Hulburt.

In the opinion of the court it is attempted to establish the proposition that a railroad company is as independent of the Government in the right to carry on its business, the use of its property, &c., as an individual would be. The court says: "Or if a railroad were built by one or more individuals, without any act of incorporation, and without

the delegation of the power of eminent domain, *as it is conceived might be done*," &c.

In the case of Hanson *vs.* Vernon, the supreme court of Iowa, upon the authority of which the court decided the case of Whiting *vs.* Fond du Lac county, say:

"It is to be remembered also that railway corporations are not organized for the purpose of developing the material property of the State. This is a mere incident of the business they prosecute. But they are organized solely to make money for their stockholders, and *the legislature have no more power over their property and rights than it has over the like property and rights of natural persons or other private corporations. Because the State cannot compel a railway company, in the absence of a contract on its part, to build its road, but it may abandon its enterprise at pleasure.*"

All this is misapprehension. A railroad company from first to last is a creature of the law, an agent of the State, exercising sovereign franchises, subject to the public will, and in our State its charter may be repealed at the pleasure of the legislature.

In State *vs.* Railroad Co., (25 Vt., 422,) Redfield, C. J., says:

"But the right to *build and run* a railroad and take tolls and fares *is a franchise* of the prerogative character, *which no person can legally exercise* without some special *grant of the legislature.*"

In Beekman *vs.* Saratoga R.R. Co., (3 Paige, 74, 75,) the Chancellor says:

"The public have an interest in the use of the railroad, and the owners may be prosecuted for the damages sustained if they shall refuse to transport an individual or his property, without any reasonable excuse, upon being paid the usual rate of fare. The legislature may also *from time to*

time REGULATE THE USE OF THE FRANCHISE and limit the amount of toll which it shall be lawful to take, in the same manner as they may regulate the amount of tolls to be taken at a ferry or for grinding at a mill, unless they have deprived themselves of that power by a legislative contract with the owners of the road."

In State *vs.* R.R., (29 Conn., 538,) the railroad company, after completing and operating its road to the navigable waters of the New Haven harbor, discontinued running the cars to that point, and the court issued a *mandamus* to compel the company to continue to run trains to the original terminus. The court say:

"We hardly know what doubtful principles of law are thought to be involved in this case. * * * All jurists and judges will at once agree that chartered companies are obliged fairly and fully to carry out the objects for which they are created, and that they can be compelled by *mandamus* to do so; and it will not be questioned that in the case of public highways, whether turnpikes or *railroads*, they are bound to keep them fit for use, and in the case of railroads to keep them furnished with suitable cars, engines, and attendants, without which they cannot be used at all."

See, also, Kean *vs.* Johnston, 1 Stock., 401.
Bagshaw *vs.* G. N. Co., 7 Hare, 114.
The G. N. Ry. Co. *vs.* Eastern Co., 9 Hare, 306.
Works *vs.* Junction R.R., 5 McLean, 425.
Worcester *vs.* R.R., 4 Met., 566.
King *vs.* Severns R'y, 2 Barn. and Ald., 646.
Walford on Railways, 298–299.
Angel on Highways, 1, 18, 370.

All railroads are post roads by act of Congress.
Brightly's Digest, 767, sec. 55.
" " 769, sec. 71.

See, also, Chap. 58, Gen'l Laws, 1859, Wisconsin.
" 79, Revised Statutes, secs. 27, 43.

The decision of the supreme court of Iowa in Hansen *vs.* Vernon was read on the argument of Whiting *vs.* Fond du Lac, and probably led to the decision in the latter case.

But the supreme court of Iowa has corrected the error it made in Hansen *vs.* Vernon, and flatly overruled that decision in the later case of Stewart *vs.* Polk County.

And we also refer to the very able opinion of Judge Emmons in Talcott *vs.* Pine Grove, circuit court of the United States for the eastern district of Michigan, copy of which we furnish to the court, and also to the recent decision of the supreme court of Minnesota, in Davidson *et al. vs.* Ramsay County, not reported. A copy of the opinion in the latter case is printed as an appendix to this argument.

APPENDIX.

By the Supreme Court of Minnesota.

SUPREME COURT—January Term, 1872.

Wm. F. Davidson and Lorenzo Allis,
Respondents,
vs.
Board of County Commissioners of
Ramsey Co., Appellants.

SYLLABUS.

To provide the public with necessary and convenient ways of travel and transportation is an essentially public function, which may be performed by the State itself, or may, in the discretion of the State, be devolved upon a private corporation or an individual, and in either case the function retains its public character. In the eye of the law railways are modern public highways, and while railway corporations are private corporations, they are created to serve distinct public uses, uses of great public interest, and are charged with public duties, and on these grounds and for public purposes enjoy privileges and powers which, as franchises, partake of the nature of sovereignty.

"A donation of money or bonds for the purpose of securing the construction of a railroad is a donation for a public purpose."

The power of taxation may lawfully be exercised for the purpose of raising money to pay bonds given to a railroad corporation to aid in the construction of a railroad.

Taxes may lawfully be levied to raise money for the purpose of paying the principal and interest of the bonds is-

sued by the city of St. Paul to the Lake Superior and Mississippi Railroad Company, by virtue of chapter 20 Special Laws, 1868, "as a bonus to assume this speedy resumption of work and the building of their railroads from St. Paul in the direction of Lake Superior."

DECISION.

By virtue of chapter 20, Special Laws of 1868, the authorities of the city of St. Paul executed and delivered to the Lake Superior and Mississippi Railroad Company interest-bearing bonds of said city, to the amount of two hundred thousand dollars, "as a bonus to insure the speedy resumption of work and the building of their railroad from St. Paul in the direction of Lake Superior in this State."

To pay the interest on the same and provide a sinking fund for the ultimate payment of the principal a tax has been levied, which this action is brought to annul and prevent the collection of, so far as it affects certain real property of the plaintiffs.

The question in the case is correctly and succinctly stated by the plaintiff's counsel, as follows: "Is the payment of these bonds an object or purpose for which the power of taxation can lawfully be exercised?" The property proposed to be taken by such taxation being money, and there being no pretence that it is to be taken as any species of forced loan, or with any purpose of making compensation for the same, no claim is made that the issue of the bonds or the levy or collection of taxes to pay the interest or principal thereof is in any sense an exercise *of the eminent domain* in the appropriation of the private property of the citizen to public uses.

Sharpless *vs.* Philadelphia, 21 Penn., 166, 187.
The People *vs.* Mayor of Brooklyn, 4 Comst., 419.
Gilman *vs.* Sheboygan, 2 Black, 510; Cooley's Const. Lim., 526.

If, then, the so-called taxation is to be sustained at all, it must be sustained as taxation, which it is in form and purports to be in fact.

By sec. 1, Art. 3, and sec. 1, Art. 4 of the constitution of this State, a general power of legislation is recognized as

one of the attributes and functions of the State government, and the exercise of the general power is committed to the Senate and House of Representatives as the legislature. The Federal Constitution, as well as the constitution of this State, contains provisions prohibitory, directory, and mandatory, which operate to some extent to control legislative action, all of which might be dismissed with the single remark that none of these have any material bearing upon the subject of our present examination.

Of one or two provisions of this nature in our State constitution which relate especially to the subject of taxation, and to which reference was made upon the argument at the bar, we shall, however, take occasion to speak of by and by.

A general power of legislation, because it is general, embraces the general power of passing laws applicable, not only to the State at large, but to each of its subordinate political subdivisions, and, among other things, of passing laws providing for taxation.

It follows that the legislature of this State possesses the general power of passing laws applicable to the city of Saint Paul, authorizing said city to issue its bonds and to levy taxes to pay the principal and interest thereof. And this is what the legislature has attempted to do, by chapter 20, Special Laws 1868, under which the bonds in this instance were issued, and the tax complained of levied. The objection made to the law is, that it purports to authorize the exercise of the taxing power for purposes for which it cannot be exercised. In other words, it is claimed that so-called taxation is not taxation in any proper sense, but confiscation or some other unauthorized mode of depriving the citizen of his property.

The taxation provided for is taxation in form. If it is not taxation in fact, either because it is inhibited by our constitution, either expressly or by implication; if it is taxation in fact, and is not forbidden by the constitution, then, under the grant of general legislative power, it was, as we have seen, competent for the legislature to authorize the same.

The first inquiry in our investigation will then be: What are taxes?

So far as this case requires they may be well defined to

be pecuniary charges imposed by the legislative power of the State, upon property, to raise money for public purposes. (Sharpless *vs.* Mayor of Philadelphia, 21 Penn. Stat., 169; Backwell on Tax Titles, 7 Cooley Const. Lim., 479.)

The plaintiff's counsel claims that the purpose for which money is raised by taxation must be not only public but governmental. But we think that neither reason, authority, nor common usuage support his definition. He argues that a tax must be raised for and to be used in the support of the Government. The public purpose which will justify the laying of a tax must be a public purpose in the above sense. It is not the public benefit merely which will constitute a public purpose in this sense. Schools, colleges, hospitals, &c., steamships and other carrying lines, when established and conducted by individuals, or private corporations, are nevertheless highly and extremely beneficial to the public, but who would have the hardihood to claim that a tax could be lawfully laid and collected and given to such individuals or corporations in aid of their respective enterprises?

It seems to us that the plaintiff's counsellors in undertaking to manufacture a definition. The meaning of a word is to be ascertained, not by any such process, but by inquiring what those who use it mean by it. That the word is not usually employed in any such limited sense as that for which the counsel contends is shown by common legislative construction and practice here and elsewhere, and by the concurring determination of nearly all the courts of last resort in this country, in favor of the right to impose taxes for purposes like those for which the tax complained of in this case is levied. The descriptive definition which is by usage so universal and authoritative given to the term taxation certainly does not require that the power of taxation should be exercised and the taxes raised (as the counsel claims) exclusively in the support of the Government. Some of the very cases put by the counsel of donations of money raised by taxation to schools, colleges, hospitals, and steamships, and other carrying lines, when established or conducted by individuals or private corporations, are of such frequent occurrence that, so far from supporting the counsel's view, they tend very strongly to show

that the power of taxation, by common consent and general understanding, extends to public purposes in general, whether "governmental" in the counsel's view or not. Taxes being, then, charges imposed for public purposes, the next inquiry is: Are the taxes complained of in this case imposed for such purposes? They were, as we have seen, authorized and levied for the declared purpose of making a donation to the Lake Superior and Mississippi Railroad Company, to insure the resumption of work upon and the completion of said company's railroad from St. Paul in the direction of Lake Superior. Is the purpose of constructing a railroad public in its nature? In the case of Sharpless *vs.* Mayor of Philadelphia, (21 Pennsylvania Statutes, 169,) which may be regarded as a leading case upon this subject, Chief Justice Black says: "I have conceded that a law authorizing taxation for any other than public purposes is void, and it cannot be denied that a railroad company is a private corporation.

"But the right to tax depends upon the ultimate use, purpose and object for which the fund is raised, and not on the nature and character of the person or corporation whose immediate agency is to be used in applying it. A tax for a private purpose is unconstitutional, though it pass through the hands of public officers, and the public may be taxed for a public work although it be under the direction of an individual or private corporation. The question then is, whether the building of a railroad is a public or private affair. If it be public, it makes no difference that the corporation which has it in charge is private. A railroad is a public highway for a public benefit, and the right of a corporation to exact a uniform, reasonable, stipulated toll from those who pass over it does not make its main use a private one. The public has an interest in such a road when it belongs to a corporation as clearly as they would if it were free, or as if the tolls were payable to the State, because travel and transportation are cheapened by it to a degree far exceeding all the tolls and charges of every kind, and this advantage the public has over and above those of rapidity, comfort, convenience, increase of trade, opening of markets, and other means of rewarding labor or promoting wealth, &c., &c. It is a grave error to suppose that the

duty of a State stops with the establishment of those institutions which are necessary to the existence of government, such as those for the administration of justice, the preservation of the peace, and the protection of the country from foreign enemies; schools, colleges, and institutions for the promotion of the arts and sciences, which are not absolutely necessary, but highly useful, are also entitled to a patronage enforced by law.

"Canals, bridges, and other artificial means of passage and transportation from one part of the country to the other, have been made by the sovereign power and at the public expense in every civilized State of ancient and modern times. It being the duty of the State to make such public improvements, if she happen to be unable or unwilling to perform it herself to the full extent desired, she may accept the voluntary assistance of an individual, or a number of individuals associated together or incorporate into a company. The company may be private, but the work they are to do is a public duty, and along with the public duty there is delegated a sufficient share of the public power to perform it. The right of eminent domain is always given to such corporations. But the right of eminent domain cannot be used for private purposes, and therefore if a railroad, canal, or turnpike, when made by a corporation, is a mere private enterprise, * * * there never was a constitutional charter given to such a corporation, and every taking of land or materials under any of them was a flagrant trespass. If the making of a railroad is a public duty which the State may either do entirely at the public expense or cause to be done entirely by private corporation, it follows that such a work may be made partly by a corporation, and the people may be taxed for a share of it as rightfully as for the whole. The corporation may be aided by an exertion of the taxing power as well as the eminent domain. Accordingly we find that from the earliest times the Commonwealth has subscribed to the stock of such corporations. * * * Now, if the legislature may create a debt and lay taxes on the whole people to pay for such subscriptions, may they not, with more justice and greater propriety, and with as clear a constitutional right, allow a particular portion of the people to tax themselves to promote in a similar

manner a public work in which they have a special interest? * * * I cannot conceive of a reason for doubting that what the State may do in aid of a work of general utility may be done by a county or a city for a similar work which is especially useful to such county or city, provided the State refuses to do it herself and permits it to be done by the local authorities."

In Rogers *vs.* Burlington, (3 Wallace, 654,) it is said by Mr. Justice Clifford that "railways, as a matter of usage founded on experience, are so far considered by the courts as in the nature of improved highways, and as indispensable to the public interest and the successful pursuit, even of local business, that a State legislature may authorize the towns and counties of a State through which a railway passes to borrow money, issue their bonds, subscribe for the stock of the company, or purchase the same with the view of aiding those engaged in constructing or completing such a public improvement, and a legislative act is not in contravention of any implied limitation of the power of the legislature.

"Decisions to that effect have very much increased within the last few years, and are constantly increasing, both in the State and Federal courts, until it may be said that the rule here laid down pervades the jurisprudence of the United States. Exceptional opinions advancing the opposite doctrines may be found, but they cannot be regarded as sound, in view of the fact that the weight of authority is very greatly the other way." (See also Elpecke *vs.* City of Dubuque, 1 Wallace, 175; Meyer *vs.* Muscatine, H., 384; Stewart *vs.* Board of Supervisors of Polk Co., 30 Iowa, 9;) and cases cited in Cooley Const. Lim., 189, and Seg, and in Redfield on Railways, S., 230.)

There are certain franchises which, says Chancellor Kent, (3 Com., 458,) "are understood to be royal privileges in the hands of a subject. The privilege of making a road or establishing a ferry, and taking tolls for the use of the same, is a franchise, and the public have an interest in the same."

We think that a further authority or reasoning is required to show that to provide the public with necessary and convenient ways of travel and transportation is an essentially public function which may be performed by the State itself, or may in the discretion of the government be devolved upon

a private corporation or an individual, and that in either case the function retains its public character. In the eye of law, railways are modern public highways, and while railway corporations are private corporations, they are created to serve distinct public uses, uses of great public interest, and are charged with public duties, and on these grounds, and for public purposes, enjoy privileges and powers which, as franchises, partake of the nature of sovereignty. (5 Am. Law Rev., 113.)

Nothing more need be said to show that a donation of money or bonus for the purpose of securing the construction of a railroad is a donation for a public purpose. And it follows that the taxation complained of in this instance, being for a public purpose, was not only taxation in form, but taxation in its nature and in fact.

It is objected to the taxation in this case that the money to be raised is to be given to the railway company. So far as the question of power to tax is concerned, we think it quite unimportant whether the money to be raised is to be given to the company, or loaned to it, or applied to pay for subscriptions to its stock. (Stewart *vs.* Board of Supervisors, *supra.*) As remarked by Chief-Justice Black, "the right to tax depends upon the ultimate use, purpose, and object for which the fund is raised." If, as we have endeavored to show, the purpose of constructing a railroad is a public purpose, it is competent for the legislature to exercise this taxing power in its aid, and the manner in which such aid is to be applied is a matter of legislative discretion. If it is thought to be better that an outright gift of money should be made than that the city should become a stockholder in the road, there is nothing to prevent the former course from being adopted. If the legislature can do this thing at all, what objection can there be to the doing it in the best way?

It is further argued that the taxing power is not properly exercised in this instance, because the railroad to be built is outside of the limits of St. Paul. A kindred objection was pressed in Sharpless *vs.* The Mayor of Philadelphia, *supra*, and Chief-Justice Black answers it in these words: "I have already said that it is the interest of the city which determines the right to tax her people. Therefore, the lo-

cation cannot be an infallible criterion." * * * "It seems very plain that a city may have exactly the same interest in a road which terminates outside of her borders as if the depot was within them." * * * "If she has an interest in any part, she has probably an equal interest in every part. Railroads are generally made to connect important trading points with each other. These remarks not only apply to this case, but their force is perhaps somewhat enhanced by the consideration that they were made in a case in which it appeared that the nearest terminus of the railroad aided was three hundred and fifty-six miles west of the city of Philadelphia, by which the aid was rendered." The railroad in question, in the case at bar, was a proposed highway to connect the navigable waters of the Mississippi, at St. Paul, with Lake Superior. That the inhabitants and business of St. Paul, its southern terminus, would derive peculiar advantages and conveniences from its construction there was no reason to doubt, at the time when the taxes objected to were authorized and levied, and that the city had a special and peculiar public interest in the road has been abundantly demonstrated by its completion and operation.

It is again objected to the tax in question, that the donee is a private corporation, having the sole ownership and control of the railroad to be built. This objection is effectually disposed of by what has been before said in reference to the public uses for which the corporation has been created, the public functions which it exercises, and the right of the State to devolve such functions upon it.

Another objection is that the tax complained of is not within the taxable power, because "the donee, when it received the donation, was already under a contract with the State to build this identical road, and held its franchise and had received an enormous land grant upon the condition that it would speedily build the road." If all this be admitted, it proves nothing. The general power to tax for the purpose of promoting the construction of railroads existing, and this road being one in which the city had a peculiar public interest, it was for the legislature and the city authorities to determine whether this was a proper case for the exercise of the taxing power. The question was, as it

well might be, not whether the company had bound itself to construct the road, but whether it could and probably would construct it. It was the road, not the company's obligation to construct it, that was wanted. If, in the judgment of the legislature and city authorities, it was necessary, in order to secure the completion of the road, to aid in its construction, and these bonds were issued in the exercise of a discretion which we have no power to review.

It remains to consider sundry objections which are made to the taxes sought to be enjoined in this action, upon the ground that they are forbidden by the State constitution.

The constitution, in our opinion, contains no restriction upon the general power of taxation which in any way, either expressly or implicitly, prohibits the taxation complained of in this case.

Plaintiff's counsel argues that such a restriction is found in section 5, Art. 11, which reads as follows, viz: "Any county or township organization shall have such power of local taxation as may be prescribed by law."

It is argued that, in accordance with the maxim, "*inclusive unius*," &c., this section forbids the taxation objected to, because it is not local taxation.

Conceding, however, that this section is applicable to the city of St. Paul, we are of the opinion that the taxation in question is local, in the constitutional sense.

The effect of the provision of the constitution is simply to authorize the legislature to delegate to county and township organizations the power of taxing themselves. The power of local taxation meant is the power of taxing property which may properly be subject to taxation in the place where such local organizations exist; that is, within the geographical limits of the county or township, as the case may be.

It is urged that the construction gives no effect to the word "local," because no power of taxing property, other than such as is above mentioned, could be enforced upon towns and counties. But we think the criticism is too refined. The constitution was made by and for the plain people, and even if the counsel be right in supposing that, in the sense we ascribe to the word, "local" is superfluous, it at any rate seems to make, express, and put beyond doubt,

that which might otherwise popular mind well be of doubtful implication.

Plaintiff's counsel further refers to sections 5, 7, and 10 of Art. IX of our constitution, which forbids the State from contracting debts for works of internal improvement, and from loaning its credit in aid of any corporation, &c.

The argument is, that as the State could not issue bonds and raise taxes to pay them, as the city has done in this instance, then its subordinate political subdivisions cannot do so. But this does not follow.

It is sufficient to say that the prohibition is in terms expressly confined to the State, and does not extend to cities, towns, and counties.

Whatever may be thought of the policy of permitting aid to be given to railroad corporations by the State, or any of its inferior members, there are obvious reasons why the people might see fit to deny to the State at large authority in this respect which they would not withhold from counties, cities, and towns. This would be but one more illustration of the familiar fact that the people have a great deal more confidence in themselves as personal managers of public affairs near at home than in the delegated management of the same by their representatives at a distance.

These are the only provisions of the constitution relied upon by the plaintiff's counsel, or upon which we feel it our duty to make special comment; and with reference to the constitution at large, we can only repeat that in our opinion it contains no prohibition, express or implied, of the taxation in question.

It will be seen, then, that in our opinion the taxation sought to be enjoined in this case is taxation in form and fact, and in its essential value, and it is not prohibited by the constitution, either expressly or by implication.

The order overruling defendant's demurrer to the complaint is accordingly reversed.

BERRY.